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THE U.N. DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

A REPORT

ON THE STATUS OF THE DRAFT CONVENTION, THE U.S. NEGOTIATING POSITION, AND ISSUES FOR THE SENATE

PREPARED FOR THE USE OF THE

SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

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SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

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FOREWORD

The Senate Caucus on International Narcotics Control is charged with reporting to the Senate on matters within its jurisdiction. This report has been prepared to bring the Senate up to date on the status of negotiations on the U.N. Convention Against Narcotic Drugs and Psychotropic Substances (the "Convention"). Specifically, this report provides an analysis of the most recent draft of the Convention, the U.S. negotiating position, and issues the Senate should consider in preparing to offer its advice and consent on the Convention if and when the President submits it to the Senate for ratification.

Drug trafficking is a problem of international proportions, and any effective response must be international in scope. The Convention now being negotiated in Vienna presents a rare opportunity to bring the international community together on a problem on which there is a general consensus to take action. Past U.N. agreements, including the 1961 Single Convention on Narcotics Drugs, its 1972 Protocol, and the 1971 Convention on Psychotropic Substances, have focused primarily on controlling the production of licit drugs and the prevention of their diversion into the illicit market place. In contrast, the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance focuses solely on law enforcement measures, including asset seizure and forfeiture, eradication, extradition, and information sharing.

Law enforcement measures are an important component of the U.S. Government's international narcotics control policy. If this Convention is to "make a difference" in effectively suppressing international drug trafficking, it must contain specific, mandatory language committing the signatory nations to taking concrete steps against drug trafficking. While the draft Convention contains many provisions which should assist U.S. law enforcement officials, the current language contains numerous loopholes and leaves many important issues unresolved. The upcoming round of negotiations may be the last chance U.S. negotiators have to resolve these very important problems.

At our request, Raphael Perl, a specialist in international narcotics control in the Foreign Affairs Division of the Congressional Research Service, worked extensively with Caucus staff in the preparation of this report. We would like to thank Mr. Perl for his dedicated work on this project.

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THE U.N. DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

I. Executive Overview

U.N. DRAFT CONVENTION

The U.N. Draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is a multinational agreement designed to increase the effectiveness of law enforcement efforts against illicit drug trafficking. The nations participating in drafting the Convention seek to achieve this goal by including provisions which require each signatory country to:

(1) eradicate illicitly cultivated narcotic crops,

(2) monitor chemicals and equipment used in the processing of drugs,

(3) identify, seize, and forfeit illicitly generated proceeds,

(4) improve international legal cooperation by such means as extradition, mutual legal assistance, and exchange of information relating to trafficking activities,

(5) improve "controlled delivery" procedures (a term referring to law enforcement cooperation whereby the movement of an illicit drug consignment can be monitored so that arrests are made at the time of ultimate delivery),

(6) require commerical carriers to take reasonable precautions to avoid use of their facilities and means of transport for illicit trafficking, and,

(7) prevent illicit traffic by sea, through the mails, or by abuse of special rights prevailing in free trade zones and free ports.

As of September 1987, a draft of the Convention text was available for revision. This preliminary draft had been prepared by a group of experts from the United States and other nations in response to a 1984 United Nations' General Assembly Resolution requesting the U.N. Commission on Narcotic Drugs to initiate a draft Convention addressing those aspects of illicit narcotics traffic not covered by existing multilateral agreements.

To date, negotiation and revision of the preliminary draft Convention text has moved forward with less controversy than expected. Revision of those articles considered to be more controversial, however, remains, as does agreement on the final language of all the articles.

If a final draft Convention text is completed within a "fast-track" time frame, the Convention could be open for signatures as early as fall of 1988. Prior to ratification, the President is required to transmit the Convention to the Senate for advice and consent.

ISSUES FOR CONGRESS

Major issues which warrant attention by the Congress include:

(1) Is the Convention language sufficiently obligatory and specific for items such as extradition and eradication of illicit crops. Language that merely amounts to a general statement of principles would have little impact on improving international drug control.

(2) What administrative or legislative changes will the Convention require the United States to implement?

(3) Given the diversity of national legal systems, and given the option of concluding bilateral agreements tailored to specific national needs and circumstances, is the Convention text detailed enough to provide effective procedures and guidelines for international cooperation? If not is another multilateral anti-drug convention really needed?

(4) To what extent may the final Convention text modify, weaken, or overlap other multilateral or bilateral agreements currently in force?

(5) To what degree, if any, will the Convention text be "politicized" by inclusion of political statements that are contrary to U.S. interests?

II. Evolution of the Draft Convention Text

BACKGROUND ON INTERNATIONAL DRUG CONTROL EFFORTS

For more than half a century, international efforts to deal with problems of drug abuse have included initiatives to develop a multilateral treaty system based on national control of drugs by individual states. This multilateral system, which is guided by the 1961 Single Convention on Narcotic Drugs, its 1972 Protocol, and the 1971 Convention on Psychotropic Substances, specifies drug trafficking as a serious offense, but lacks enforcement mechanisms. It concentrates instead on control of production of licit drugs and prevention of their diversion into the illicit marketplace. Multilateral anti-drug treaty efforts are supplemented by numerous bilateral treaties which aid law enforcement authorities in their efforts to bring drug traffickers to justice, i.e., extradition treaties and mutual legal assistance treaties.

In recent years, recognition of the destructive effect of illicit drug trafficking on both producer and consumer nations has risen dramatically. At the same time, nations have found it increasingly difficult to cope individually with the transnational expansion of illicit drug trafficking. Property and money transactions relating to drug trafficking have expanded dramatically and lack of uniformity in bank, tax and investment legislation has enabled traffickers to hide illicit profits. From the law enforcement perspective, extradition treaties have often proved ineffective as a vehicle for extraditing drug traffickers, and arrangements for international drug enforcement cooperation and exchange of information have often proved to be cumbersome and limited in scope of application. Finally, from the regulatory perspective, nations have yet to agree upon and implement a viable system for control and regulation of precursor chemicals—those essential for the processing of illicit drugs.

1984 GENERAL ASSEMBLY RESOLUTION

The U.N. General Assembly, on December 14, 1984 (Resolution 39/141), concluded that a new international agreement should be prepared which addresses the various aspects of illicit traffic in narcotic drugs and, "in particular, those not envisioned in existing international instruments." The Resolution requested the U.N. Commission on Narcotic Drugs (made up of experts from 40 U.N.-member states) to draft a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The new Convention was to go beyond the scope of existing international agreements (which specify drug trafficking as a serious offense but lack enforcement mechanisms) by providing governments with procedures and guidelines for working together to combat trafficking.

NARCOTIC DRUG COMMISSION'S FOURTEEN-POINT LIST

On February 14, 1986, the U.N. Commission on Narcotic Drugs adopted by consensus a resolution (1 (S–IX)) sponsored by the United States and 24 other countries. This resolution recommended 14 points for inclusion in the initial draft Convention. The 14 points contained in the resolution had been developed and drafted by a working group consisting of representatives from the United States and 20 additional countries.

These 14 elements are designed to address all phases of illicit trafficking operations ranging from production, manufacture, clandestine transportation and money laundering. Their overall purpose is to improve and strengthen international cooperation and coordination among customs, police, and judicial authorities, and to provide them with legal guidelines needed to interdict effectively all phases of drug trafficking.

Specifically, the 14 elements recommended for inclusion in the Convention by the Commission on Narcotic Drugs are:

1. Definitions, as required for the purpose of the Convention;
2. Identifying, tracing, freezing and forfeiting of proceeds of drug trafficking;
3. Strengthening of the obligations concerning extradition for offenses relating to drug trafficking;
4. Measures to monitor or control specific chemicals, solvents and precursors used in the illegal processing or manufacture of illicit drugs;
5. Measures to ensure that commercial carriers are not used to transport illicit narcotic drugs and psychotropic substances, including the development of a system of sanctions;
6. Means of cooperation among countries, particularly among law enforcement agencies, for the exchange of information as well as the establishment of joint communications links, training assistance and the exchange of expertise, including the posting of drug liaison officers as needed;
7. Strengthening cooperation among countries to provide mutual legal and judicial assistance in cases relating to drug trafficking, and promotion of mutual assistance in investigative and prosecutorial matters;
8. Establishing controlled delivery procedures;

9. Adequacy of sanctions for offenses relating to drug trafficking;

10. Strengthening mutual cooperation among States in the suppression of illicit drug trafficking on the high seas;

11. Measures to curtail the illicit and uncontrolled cultivation of narcotic plants, including prevention, crop substitution and eradication;

12. Extension of controls in free trade zones and free ports;

13. Prevention of receipt, possession and transfer of equipment for the purpose of illegal manufacturing, compounding or processing of narcotic drugs and psychotropic substances;

14. Prevention of the use of the mails for the illegal transport of narcotic drugs and psychotropic substances.[1]

1986 PRELIMINARY DRAFT AND U.S. PROPOSALS AND COMMENTS

The Commission's 14 key elements provided the basis for the preliminary draft of the 14 Convention articles. The preliminary draft was prepared by a group of experts from the United States and other volunteer nations. It was released by the U.N. Secretary General in a report dated June 13, 1986.[2] On October 30, 1986, following a review of the draft Convention, the U.S. Mission to the United Nations forwarded U.S. proposals and comments to the U.N. Secretariat's Division of Narcotic Drugs. These comments, which were accompanied by a revised text, were prepared by the same U.S. interagency working group (comprised of representatives of the Departments of Justice, State, Transportation, and Treasury) that had worked on the preparation of the original list of 14 Convention elements and preliminary Convention draft.[3]

DRAFT PREAMBLE, RELATED PROVISIONS, AND CONSOLIDATED COMMENTS

On April 6, 1987, a consolidated working document containing the first draft of the Convention, comments made by governments and the Commission on Narcotic Drugs on the draft, a draft preamble, draft implementation mechanisms, and draft final provisions, was prepared by the U.N. Division of Narcotic Drugs.[4] This document was circulated to U.N. member states on April 29, 1987, with an invitation to participate in further review and redraft of the Convention.

INTERIM PARTIAL REDRAFT AND COMMENTS

An open-ended intergovernmental group of 135 experts from 57 countries met in Vienna in June and July of 1987. The group reviewed, reformulated, and provided written comments on Article 2, and Articles 6 through 14 of the draft Convention.[5] The sequence

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[1] United Nations. Economic and Social Council. Commission on Narcotic Drugs. Implementation and Development of International Instruments on the Control of Narcotic Drugs and Psychotropic Substances. Resolution 1 (S–IX), February 14, 1986.

[2] For text of the 14 draft articles, see U.N. Document E/CN.7/1982/2, Appendix I.

[3] The comments and proposals developed by the U.S. interagency working group are discussed further in the Annex to this report under the heading: "Article-by-Article Comparison of U.S. Position With the 1986 Preliminary Draft." The verbatim text of these proposals and comments may be found in Appendix II.

[4] See U.N. Doc. DND/DCIT/WP.1, found in Appendix III of this report.

[5] The text of the groups' July 22, 1987, interim report is found in U.N. Document, DND/DCIT/WP.12, Appendix IV.

in which articles were to be discussed (Articles 14, 13, 6, 10, 7, 8, 9, 11, 12, 2, 3, 4, 5, and 1) appears to reflect those items of least controversy first and the controversial articles coming last (i.e. those relating to penal sanctions, asset forfeiture, extradition, mutual legal assistance, and definitions).

NEGOTIATION SCHEDULE AND PROCEDURE FOR FINAL CONCLUSION

The intergovernmental group of experts is expected to meet again in October 1987, and U.S. negotiators hope that the group will present a final draft of the Convention to the Commission on Narcotic Drugs for approval in February 1988. The Commission would then decide if the new draft will be returned to the group of experts for more work, or if it will be endorsed and forwarded up the U.N. chain of approval.

If the Commission endorses the draft Convention, it would then recommend to the Economic and Social Council one of two methods of adoption. The first method would be for the General Assembly to convene a plenipotentiary conference to adopt the Convention and open it for signature. A second, but less likely, approach would be for the Commission to recommend that the U.N. General Assembly adopt the Convention and open it for signature.

A fast-track scenario would be for the Commission on Narcotic Drugs (after receiving the final draft from the group of experts in February 1988) to endorse the draft and forward it up the U.N. chain of command. Under this scenario, the draft could: (1) go to the Economic and Social Council for approval in May 1988; (2) go to a plenipotentiary conference open to all U.N. members in the fall of 1988, or early 1989; and (3) be in force as soon as possible thereafter (i.e. after the required number of countries sign or ratify it).

A contentious scenario would occur if the Commission on Narcotic Drugs (at its spring 1988 meeting) returns the draft Convention to the group of experts for further revision. Under such circumstances, a probable timetable is more difficult to predict.

Once the treaty is opened for signature (perhaps in late 1988 or early 1989), entry into force would not take place until the required number of ratifications or accessions has been submitted. Although provisions governing entry into force are not yet complete, obtaining the number of ratifications or accessions needed to bring the Convention into force might take from one to five years. The Convention would not enter into force for the United States until the document was ratified by the President, after Senate advice and consent. Thus, it is difficult to determine how long these final stages might take, and when the Convention might enter into force for the United States.

III. Issues of Concern to U.S. Negotiators

WHO DECIDES U.S. NEGOTIATING POSITIONS

U.S. policy on the draft Convention and its negotiation is formulated by an interagency working group organized by the Department of State's Bureau of International Narcotics Matters. Represented in the group are the Customs Service, the Department of Justice (Drug Enforcement Administration, Federal Bureau of In-

vestigation), the Department of State, and the Coast Guard. Typically, each agency will send two to three representatives to the group—one consisting of a senior attorney, and one person representing the agency from a law enforcement perspective. The working group structure does not provide for formal advisory representation or input from Members of Congress, or members of the public at large.

The United States sent five experts, representing the five agencies formulating U.S. policy, to represent its interests at the open-ended intergovernmental working group which produced the Interim Partial Redraft of the Convention text in July of 1987.

U.S. VIEW OF THE ISSUES

Members of the U.S. interagency working group are conceptually in agreement on what they would like to see in the final text of the Convention.

Of major importance to U.S. working group members is that the final Convention contain strong obligations relating to:

(1) *Extradition of drug traffickers.*—In particular, U.S. negotiators insist that Article 4 should *not* contain language that permits narcotic traffickers to avoid extradition because they are nationals of the country receiving the extradition request.

(2) *Asset tracing and forfeiture.*—U.S. negotiators insist that property and assets be subject to forfeiture under Article 3 if the owner had reason to know (as opposed to knowledge) such assets were derived from, or intended to be used in illicit trafficking. They also want Article 3 to provide for forfeiture of "instrumentalities" (property used or intended to be used to further illicit traffic).

(3) *Mutual legal assistance.*—U.S. negotiators want "mutual legal assistance" defined to include: (a) transferring persons in custody for the purpose of giving testimony; and (b) freezing and seizing requested proceeds and instrumentalities.

(4) *Maritime anti-drug enforcement procedures.*—U.S. negotiators want Article 12 to clearly specify procedures that permit prompt boarding of vessels, and searching and seizing of contraband. They also want it clearly specified that a nation may enforce the Convention anywhere beyond the territorial sea of a coastal state without that state's consent. ("Territorial sea" is currently recognized by more than 95 nations as being the 12-mile area from their coast.)

(5) *Regulation of precursor chemicals.*—U.S. negotiators want Article 8 to set forth strong, specific, and mandatory regulation of chemicals needed to manufacture drugs. They favor a broader definition of "immediate precursor" chemicals (placing more chemicals in list A where they are subject to more stringent regulation) and a more restrictive definition of "essential" chemicals (placing fewer chemicals in the lesser regulated (list B) category).

(6) *Eradication of illicit crops.*—U.S. negotiators insist that Article 10 contain mandatory langauge requiring nations to eradicate illicit narcotic crops.

(7) *Controlled delivery.*—U.S. negotiators insist that Article 7 specify clear procedures to facilitate cooperation among national law enforcment agencies so that once an illicit drug consignment has been identified, its route will be monitored so that network arrests can be made at the time of ultimate delivery.

In terms of definitions, U.S. working group members emphasize several points: that the term "illicit traffic" includes precursor chemicals; that "proceeds" includes property used, or intended to be used to further illicit traffic; and that "high seas" for drug law enforcement purposes is consistent with the traditional concept of territorial sea (up to 12 miles from the coast). U.S. negotiators also want Article 2 of the Convention to specify: (1) that money laundering will be considered as serious a crime as narcotics trafficking; and (2) under what circumstances a party will have jurisdiction over narcotics offenses.

U.S. negotiators are unanimously opposed to what they would deem "politicization" of the Convention by inclusion of references to social questions or to issues such as a shared responsibility of consumer nations to fund economic development in conjunction with drug eradication programs. U.S. negotiators would oppose in the same category references to special treatment for the problems of transit states who argue that they need special help because they are the victims of chance geographical location.

IV. Issues for the Senate

If an agreement is reached, signed by the President for the Senate and presented to the Senate for its advice and consent, the central question will be whether to approve the Convention, decline to approve it, or approve it with conditions and reservations. In making this judgment, the Senate should consider the following issues:

1. To what extent are the priorities of the United States reflected in the final Convention? Is the language obligatory and specific for items of major importance, such as:
   (a) extradition of drug traffickers;
   (b) asset tracing and forfeiture;
   (c) mutual legal assistance;
   (d) maritime anti-drug enforcement procedures;
   (e) regulation of precursor chemicals;
   (f) eradication of illicit crops; and
   (g) controlled delivery.
2. What administrative or legislative changes, would the Convention require the United States to implement? For example, would Article 9 of the Convention commit the Congress to enact legislation that requires monitoring of ownership, sale, or export of pill press machines, most of which today are used for legitimate pharmaceutical purposes?
3. Given the diversity of national situations, interests, and legal systems, and given the option of concluding bilateral agreements tailored to specific national needs and circumstances, does the multilateral Convention text promise enough utility to be worth the U.S. commitment? If not, is this multilateral anti-drug convention really needed?

4. To what extent will the Convention modify, weaken, or overlap other multilateral or bilateral agreements currently in force? Will, for example, the existing international obligation to eradicate illicit crops be weakened by qualifying language in Article 10 of the Convention?

5. To what degree, if any, will the Convention text be "politicized" by inclusion of political or social statements that weaken the Convention, or that seem likely to be used in ways contrary to U.S. interests? An example of one such statement which has been proposed (but not incorporated as of September 1987) refers to a shared responsibility of consumer nations to fund economic development in conjunction with drug eradication programs.

6. What are the likely consequences of non-ratification should the Senate decline to approve the Convention? Will the U.S. forfeit its leadership role in combatting international drug trafficking? Or will there be little or no negative consequences of declining an "ineffective" drug cooperation treaty?

V. Status of Negotiations and Prospects for Final Conclusion

There is little doubt that a new convention against illicit traffic in narcotic drugs and psychotropic substances will be the outcome of negotiations currently under way to conclude such an agreement. As of September 1987, U.S. negotiators suggest that a final draft may be open for signature by as early as fall 1988, or as late as fall 1989.

U.S. negotiators stress, however, that the sequence of articles examined by the expert group has proceeded from those considered to be least controversial to those considered to be most controversial. Such an approach follows a commonly utilized negotiating strategy to first build a foundation of agreement and to continue building from there. The expert group still must settle the context of those items considered to be potentially most problematic. Among questions yet to be resolved are:

1. Will countries agree under Article 4 to extradite their own nationals despite long-standing traditions against doing so, and will their courts permit such action?

2. How strongly under Article 3—still to be redrafted by the expert groups—will countries commit themselves to adopt legislative and administrative procedures to facilitate forfeiture of proceeds?

3. Will nations (under Article 5) commit themselves to change bank secrecy laws to facilitate mutual legal assistance, and will they be able to overcome the influence of powerful domestic interest groups when attempting to implement such a commitment?

4. Will countries commit themselves to enact legislation making money laundering a crime as serious in character as narcotics distribution?

5. Will countries commit themselves to permit foreign drug liaison officers to serve on their soil under Article 6?

Thus far, negotiation of the draft Convention text has moved quickly, with minimal politicization of the issues. However, as items that emphasize differing concepts of national pride, sover-

eignty, and interests near a finalized form, attempts to dilute the binding nature of the Convention text may increase and the pace of reaching agreement may slow.

VI. Conclusions, Findings, and Recommendations

CONCLUSIONS

At this time, U.S. negotiators are generally optimistic that the Convention can be concluded, signed, and presented to the Senate for ratification by late 1988 or early 1989. In addition, U.S. negotiators are optimistic that the Convention will go far beyond a general call to nations to cooperate and work together. In support of this optimistic viewpoint, the negotiators point to the current draft of the Convention that contains compulsory obligations and guidelines for procedures which would improve the ability of law enforcement agencies to disrupt drug trafficking activities. Moreover, many countries which may be reluctant to participate directly with the United States on a bilateral basis may find a multinational agreement against drug trafficking more palatable.

This optimism, however, should not obscure the serious deficiencies in the latest draft of the Convention, nor should we allow U.N. drug control efforts to become the focus of the U.S. Government's international narcotics control strategy. The United States must continue to push for specific, mandatory language in the Convention, while pursuing both unilateral and bilateral drug control options.

Finally, if and when the Convention is signed by the President, he will be required to submit the Convention to the Senate for its advice and consent. Given the increasing tension between the executive branch and the Congress over the U.S Government's international narcotics control strategy, it is essential that the President keep the Congress fully informed of the progress of the Convention negotiations. An open and cooperative relationship between the President and the Congress will ensure that the United States has a consistent policy with respect to international narcotics control matters.

The Caucus makes the following findings on the latest draft of the U.N. Convention Against Illicit Trafficking in Narcotics Drugs and Psychotropic Substances:

FINDINGS

(1) *Obligations of Signatory Nations.*—The process of negotiating multilateral agreements necessarily involves language that reflects the lowest common denominator of every nation's interests. As a result, the operative language of U.N. agreements is often reduced to statements of general principles, not substantive obligations and commitments. This tendency towards non-specific, and sometimes meaningless, language can be seen throughout the language of the draft Convention. For example: (a) Article 2 requires signatory nations to enact penal sanctions for a number of narcotics offenses, but does not including money laundering as one of the offenses, nor does it outline the appropriate severity for any of the listed offenses; (b) Article 5 requires signatory countries to enact legislative and administrative measures to foster law enforcement cooperation, but these measures do not include the transferring of persons

in custody for the purposes of taking testimony, nor is the jurisdiction of each country's "central authority" defined, raising the possibility that this office would not be authorized to issue subpoenas or execute search warrants; and (c) Article 10 requires signatory countries to enact "appropriate measures" to eradicate narcotic drugs, without including any obligatory language as to what specific measures would be considered "appropriate." These ambiguities, and similar language throughout the draft Convention, may render important sections of the Convention essentially meaningless in their application.

(2) *Sanctions.*—One option for encouraging compliance with the Convention's mandates would be to include some mechanism for imposing sanctions against countries that fail to live up to their obligations under the Convention. The 1961 Single Convention and the 1971 Convention on Psychotropic Substances empower the International Narcotics Control Board, an independent U.N. agency, to recommend to signatory nations that they stop the import or export of licit drugs from or to any nation found not to be in compliance with the mandates of the treaties. The U.S. negotiators should consider the feasibility of such a proposal before the next round of negotiations begin.

(3) *Corruption.*—Official corruption and complicity in the drug trade by some governments, particularly the laundering of illicit drug profits, has been one of the biggest obstacles to effective bilateral and multilateral drug enforcement efforts. The draft Convention, however, contains no language addressing this aspect of the international drug control problem, nor have any proposals been seriously discussed by any participating nation. There are several options that could be considered to address the gap in the draft Convention's language: (a) including sanctions similar to those included in the 1961 Single Convention and the 1971 Convention on Psychotropic Substances against governments found participating in the drug trade, and (b) prohibiting any such government from participating in cooperative drug enforcement efforts with all signatory countries. While this Convention may not be the most appropriate vehicle to address the corruption problem, international narcotics control efforts will never adequately attack the trafficking problem until official government corruption in the drug trade is eliminated, so that the efforts of the international community can be focused solely on prosecuting the criminal syndicates directly involved in the international drug trade.

(4) *Politicization of the Convention.*—To date, U.S. negotiators have been very successful in blocking attempts to "politicize" the Convention's language by inclusion of references to social questions or to issues such as a shared responsibility of consumer nations to fund economic development in conjunction with drug eradication programs. The U.S. negotiators should be commended for these efforts, and should continue to block any attempts to blame unilaterally so-called "consuming" countries for the international narcotics trafficking and abuse problem.

(5) *Timetable for Conclusion.*—It is also important that U.S. negotiators seek to keep the negotiations on schedule. While the language of several of the most contentious articles in the treaty still needs to be agreed upon, these outstanding provisions should not be allowed to become a vehicle for delaying prompt consideration

of the Convention by the appropriate U.N. body. The current schedule for negotiations provides ample time to reach agreement on all outstanding issues, and should not be delayed.

RECOMMENDATIONS

Article 1—*Definitions.*—This article could be the most important, and ultimately the most controversial, of the Convention. The U.S. should continue to push for a definition of "carrier" to include all commercial and private carriers, and the definitions of "forfeiture" and "proceeds" should be sufficiently broad to allow law enforcement authorities an array of investigative and prosecutive tools, while the language should be sufficiently detailed to make clear the obligations of every signatory nation.

Article 2—*Penal Provisions.*—The list of serious offenses should be amended to include money laundering. In addition, some outline of the severity of specific offenses should be considered to ensure that drug traffickers face stiff criminal sanctions in every signatory country.

Article 3—*Tracing, Seizure and Forfeiture of Assets.*—To strike effectively at the financial underpinnings of drug trafficking, law enforcement authorities must be able to seize and forfeit not only the "proceeds" of drug trafficking, but also the "instrumentalities" (property used or intended to be used to further illicit trafficking) of trafficking. U.S. negotiators should push for the expanded definition of proceeds.

Article 4—*Extradition.*—U.S. negotiators should place the highest priority on ensuring that the final language does not include any provision which allows signatory countries to deny an extradition request on the basis of nationality. The arrest and prosecution of major drug traffickers, and the seizure and forfeiture of their assets, is the cornerstone of the international drug enforcement effort. It is essential that extradition procedures be simplified and expanded to ensure that drug traffickers are brought swiftly to justice.

Article 5—*Mutual Legal Assistance.*—U.S. negotiators should also place the highest priority on ensuring that signatory countries are obligated to enact laws providing for the seizure and forfeiture of drug related assets.

Article 8—*Precursor and Essential Chemicals.*—The draft Convention requires parties to take all "necessary" measures to prevent the diversion of precursor and essential chemicals for illicit purposes. The United States should insist on language that sets for clear, specific, and mandatory requirements and obligations for this article.

Article 10—*Eradication.*—The draft Convention's language relating to the eradication of narcotics crops only requires countries to take "appropriate measures." This language is virtually meaningless. U.S. negotiators should push for language that requires signatory nations to establish legal cultivation requirements, provides for the licensing of the acreage necessary to produce the legal requirement, and make unlicensed production illegal. The United States included similar requirements on a country-specific basis in

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the International Security and Development Cooperation Act of 1985 (Pub. L. No. 99–83).

Article 12—*Illicit Traffic by Sea.*—It is essential that the definition of "high seas" be interpreted similar to the definition of "territorial sea" (within 12 miles of a nation's coast). If differing interpretations are permitted (e.g. exclusive economic zones or contiguous zones) large areas of the Caribbean and the Gulf of Mexico would be excluded from the operation of this article.

ANNEX

ARTICLE BY ARTICLE COMPARISON OF U.S. POSITION WITH THE 1986 PRELIMINARY DRAFT

[Note: *** denotes an item that U.S. negotiators maintained must be in the final text for the Convention to be fully effective.[1]]

1986 Preliminary Draft Text	U.S. Position
ARTICLE 1: Use of Terms	
(Definitions)	
Article 1 defines the terms used in the Convention.	
"Commercial carrier" is the term used in the draft. This may exclude private carriers, as well as military and government carriers.	U.S. negotiators would like to see the term "carrier" defined to include all commercial and private carriers.
"Controlled substances" is defined in terms of existing international conventions.	As the term "controlled substances" has a specific connotation under existing conventions, separate and distinct from essential or precursor chemicals, U.S. negotiators consider it wise to delete references to precursor chemicals from this definition, and instead to add such chemicals to the definition of substances which may be included in the "illicit traffic" definition. This would entail establishing a mechanism to place precursor and essential chemicals on a schedule or list subject to regulation under the Convention.

[1]Source: Appendix II, U.S. Proposals and Comments to Preliminary Draft Articles; and conversations with U.S. negotiators, September 1987.

"Forfeiture" is defined as being limited to that which is court-ordered. It is not clear which authorities may order "freezing of assets."	U.S. negotiators believe that the terms "forfeiture" and "freezing" should be defined to encompass procedures other than court orders such as administrative proceedings.
"Illicit traffic" refers to controlled substances. It may not be clear that this includes precursor chemicals.	U.S. negotiators insist that the definition of "illicit traffic" include traffic in "specific chemicals contrary to the law or regulations of a party."
"Proceeds" does not clearly refer to property used or intended to be used to further illicit traffic.	U.S. negotiators recommend inclusion of the term "instrumentalities" instead of "proceeds" to refer to property used or intended to be used to further illicit traffic (a definition of "proceeds" would then be limited to property derived from illicit traffic).
"Means of transport" is not defined in the draft.	U.S. negotiators favor inclusion of a definition of "means of transport" which would not be limited to air and sea transport, but which would clearly include land transport.

ARTICLE 2: Penal Provisions--Adequacy of Sanctions

Article 2 lists narcotics offenses which countries will establish as "serious offences" and for which countries will establish penal sanctions.	Generally, U.S. negotiators favor language which would require countries to adopt strong penal provisions. They stress that this article cannot be read in isolation, but must be read in conjunction with other articles related to penal provisions and sanctions, in particular articles on extradition (Article 4), and on mutual legal assistance (Article 5).
Money laundering is not one of the listed offenses in the draft.	***U.S. negotiators want the Convention to specify clearly that money laundering will be considered an offense as serious as narcotics distribution.
In determining severity of sentences for the offenses, countries shall consider four specific aggravating sets of circumstances.	U.S. negotiators want parties to be required to take into consideration a broad list of "aggravating circumstances" when establishing certain offenses as serious offenses under domestic law.

Offenses shall be prosecuted either by the party in whose territory the offense was committed, or by the party in whose territory the offender is found.

***U.S. negotiators favor inclusion of a detailed provision making it clear in which instances a party will establish jurisdiction over narcotics offenses. This provision would provide for recognition of concurrent jurisdiction in some circumstances. (See: U.S. Proposals and Comments. Appendix II, Article 4 [BIS].)

ARTICLE 3: Identification, Tracing, Freezing, Seizure and Forfeiture of the Proceeds of Illicit Traffic

Under this article parties agree to prevent and repress acquisition, possession, transfer, and laundering of "proceeds" derived from or used in narcotics traffic.

U.S. negotiators insist on addition of the term "instrumentalities" (property used or intended to be used to further illicit traffic) to the title and substance of this article.

Acquisition, possession, transfer, or laundering of such proceeds with knowledge of their source shall be treated as a punishable offense.

U.S. negotiators favor forfeiture if the owner of proceeds or instrumentalities had reason to know (as opposed to actual knowledge) such assets were derived from or used, or intended to be used, in illicit trafficking.

(The Department of Justice and the U.S. Customs Service maintain a lead interest in this article.)

ARTICLE 4: Extradition

This article provides for extradition of narcotics offenders.

This draft does not permit extradition to be denied because an offense is political in character.

U.S. negotiators (while recognizing a politically motivated prosecution as grounds to deny an extradition request) believe that the Convention should not allow extradition to be refused on the grounds that the offense was "political in character," or was "politically motivated."

The draft does not permit an extradition request to be denied because a person being sought is a national of the requested party (unless nonextradition is a constitutional requirement in such circumstances).

***U.S. negotiators also firmly insist that any provisions permitting narcotics traffickers to avoid extradition on the basis of nationality (which may be a foreign constitutional requirement) would undercut the spirit and intent of the Convention.

The draft requires as supporting evidence for an extradition request "reasonable ground" that an offense under the Convention was committed.

U.S. negotiators also favor deletion of any clauses (and specifically paragraph 8 of Article 4 of the 1986 preliminary draft; see appendix I for text) which might be construed as raising the degree of evidence required to support a request for extradition under the Convention. Paragraph 8 of the preliminary draft requires evidence providing "reasonable" grounds to believe that the person whose extradition is sought committed an offense under Article 4.

(The Department of Justice is the agency with lead interest in this article.)

Article 5: Mutual Legal Assistance

This article establishes a framework and procedures for legal cooperation in investigating and prosecuting drug traffickers.

The parties agree to adopt legislative and administrative measures to achieve cooperation in five specified area (but not limited to those five areas). Transferring persons in custody for the purpose of giving testimony, and freezing and seizing assets are not specifically listed in the five areas of cooperation.

***U.S. negotiators favor a definition of "mutual legal assistance" under this article which includes (1) transferring persons in custody for the purpose of giving testimony and (2) freezing and seizing proceeds and instrumentalities.

The draft provides that each party shall designate an appropriate authority to process requests for assistance. It is vague as to the powers of the authority.

U.S. negotiators suggest that each country establish a central authority to process requests administratively. This authority should have the power to issue subpoenas, execute search warrants, and prosecute illicit traffickers.

The draft requires that the requesting party shall not disclose the information received without consent of the requested party.

U.S. negotiators favor inclusion of a clause which would require the requested party to keep confidential the substance of the request--or if this cannot be done--to so inform the requesting party who would then have the option to withdraw the request.

The draft text does not specifically address whether lack of "double criminality" may be asserted as grounds to deny a request for assistance.

U.S. negotiators favor a broad level of cooperation without a requirement of "double criminality" (that the offense involved constitute an offense in both countries) before assistance is rendered.

(The Department of Justice is the agency with the lead interest in this article.)

ARTICLE 6: Law Enforcement Cooperation and Training

This article requires parties to cooperate closely in exchanging information, and training assistance to enhance law enforcement activities.

It provides that the parties shall consider allowing the posting of drug liaison officers on each other's soil.

U.S. negotiators favor language requiring posting of drug liaison officers from other parties within member countries' borders. Currently, paragraph 4 of the Interim Partial Redraft of this article contains language requiring that the parties "shall consider, where appropriate, allowing the posting" of such liaison officers. (See Appendix IV for Interim Partial Redraft text).

(The Drug Enforcement Administration is the agency with the major interest in this article.)

ARTICLE 7: Controlled Delivery

This article provides for law enforcement cooperation so that once an illicit drug consignment has been identified, its route will be monitored so that arrests can be made at the ultimate point of delivery.

(Controlled delivery is a law enforcement concept under which law enforcement agencies cooperate so that once an illicit drug consignment has been identified, its route will be monitored so that arrests will be made at the point of ultimate delivery.)

***It is important to U.S. negotiators that this concept be incorporated into the text of the Convention.

(The Drug Enforcement Administration has the lead interest in this issue.)

ARTICLE 8: Measures to Monitor or Control Immediate Precursors and Essential Chemicals Used in the Illicit Processing or Manufacture of Narcotic Drugs or Psychotropic Substances

This article requires parties to take all necessary measures to prevent diversion of chemicals used in processing or manufacture of illicit drugs to criminal elements.

***U.S. negotiators favor language setting forth strong, clear, specific, and mandatory requirements and obligations in this article.

Two lists are to be established. List A chemicals will be more strictly regulated, and list B chemicals, less so.

A liberal definition of essential chemicals (more chemicals in the list A category) is preferred over a more restrictive definition which would place more chemicals in the precursor (list B) category. U.S. negotiators have proposed a specific list of chemicals for inclusion in each list. (See Article 8, Appendix III.)

(The Drug Enforcement Administration has a lead interest in this article.)

ARTICLE 9: Materials and Equipment

This article requires that the parties shall consider regulating pill press machines.

It is important to U.S. negotiators that the Convention contain mandatory language to regulate, monitor and restrict access to pill press machines. The Interim Partial Redraft (Appendix IV, Article 9) left out such language which was contained in the Preliminary Draft (Appendix I, Article 9, paragraph 2).

(The Drug Enforcement Administration maintains the lead interest in this article.)

ARTICLE 10: Methods to Eradicate Narcotic Plants Cultivated Illicitly

This article requires that parties shall adopt appropriate measures: (1) to prevent illicit cultivation, and (2) to take effective action to eradicate illicit narcotics production. Biological and ecological considerations shall be given due regard, and cooperation in eradication efforts shall be given due regard to socioeconomic conditions prevailing in the area.

***It is important to U.S. negotiators that this article include mandatory language to eradicate narcotic plants that is not qualified by political or social statements such as: (1) requirements to first consider the socioeconomic impact of eradication; (2) obligations of major consumer nations to offset loss of narcotic income with economic aid; (3) the need to first consider traditional domestic use of narcotic plants, or (4) the need first to protect the environment. (See Article 10 of the Interim Partial Redraft, Appendix IV, for examples of such statements.) This is not to say that U.S. negotiators do not favor such concepts as protection of the environment, but simply that they want the obligation to eradicate to be worded as clearly, unequivocally, and as strongly as possible. U.S. negotiators stress that herbicides currently used in eradication are widely employed in agricultural practice and are safe and ecologically benign.

(See: U.S. Comments and Proposals, Article 10 Commentary, Appendix II.)

(The Department of State maintains the lead interest in this article.)

ARTICLE 11: Commercial Carriers

This article requires that the parties "shall require commercial carriers to take reasonable precautions" to prevent the use of their means of transport for illicit drug traffic, and shall impose "adequate" penalties for failure to do so.

U.S. negotiators want strong language to insure that means of transport operated by commercial carriers are not used in illicit traffic and that carriers be required to take a reasonable (perhaps even high) degree of precaution to prevent such use.

U.S. negotiators would like to see Article 11 apply to illicit traffic by carriers in general: both private as well as commercial, and have the Article 1 definition of "carrier" include all types of carriers. (Note that Article 11 of the Interim Partial Redraft does not endorse this concept. See: Article 11, Appendix IV.)

U.S. negotiators propose that parties to the Convention shall institute a system of penalties to insure compliance with carrier reporting and inspection requirements including possible forfeiture of the means of transport.

The parties agree that it shall not be considered unreasonable to delay an aircraft's departure to undertake a thorough drug search.

U.S. negotiators want the concept--that it is not considered unreasonable to delay departure of a commercial aircraft while undertaking a thorough drug search--included in the text of this article.

U.S. negotiators are opposed to inclusion of language requiring payment of compensation to carriers for delays incurred because of fruitless searches.

(The Customs Bureau maintains the lead interest in these issues.)

ARTICLE 12: Illicit Traffic by Sea

This article requires that the parties shall cooperate to the fullest extent possible to suppress illicit drug traffic by sea.

Under this article, sea is defined as "high seas" as defined by part VII of the U.N. Convention on the Law of the Seas.

***It is important to U.S. negotiators that for the purposes of exercising enforcement authority under the Convention without consent of the coastal state, the definition of "sea" be limited to that of "territorial sea." "Territorial sea" is currently recognized by more than 95 nations as being the 12 mile area from the coast. (As currently defined, "high seas" might be interpreted as waters outside nations' contiguous zones and exclusive economic zones which would exclude large areas of the Caribbean and the Gulf of Mexico from the operation of this article. (See: U.S. Proposals and Comments, Commentary on Article 12 paragraph 3, Appendix II.)

If a party has reasonable grounds to believe a vessel on the high seas is engaged in illicit drug traffic, it may board, search, and seize the vessel if: (1) the vessel is registered under its own law, or (2) the flag state of the vessel grants permission, and/or (3) the vessel displays no flag or markings of registry.

***U.S. negotiators want clear language and procedures permitting prompt boarding of vessels, and searching and seizing of contraband. Desirable is a clause permitting any country to board suspect ships not flying a national flag.

U.S. negotiators favor language requiring parties having knowledge of trafficking by a foreign flag vessel to inform the flag state of its suspicions. (See: U.S. Proposals and Comments, Commentary on Article 12, paragraph 2, Appendix II.)

A central authority shall be designated by each party to process requests for boarding of their flag vessels.

(The Coast Guard maintains the lead interest in this article.)

ARTICLE 13: Free Trade Zones and Free Ports

This article provides that the parties shall apply measures to suppress illicit traffic in free trade zones and free ports that are equivalent or more stringent that those applied in other parts of their territory.

The concept behind this article is that such areas should not provide open invitations for illicit drug activity. U.S. negotiators endorse the concept and have not favored revision of the Preliminary Draft (See Appendix I, for preliminary draft text of Article 13.)

(The Drug Enforcement Administration and the Customs Bureau maintain the lead interest in this article.)

ARTICLE 14: Suppression of the Use of the Mails for Illicit Traffic

This article provides that the parties shall adopt measures to suppress use of the mails for illicit traffic and shall cooperate together in this regard.

U.S. negotiators support the concept of suppression of use of the mails for illicit traffic and have not favored revisions in the preliminary draft. (See: Appendix I for preliminary draft text of Article 14.)

(Presumably, the Postal Service would be the lead agency involved in this issue, however their interests are being represented the other members of the interagency working group.)

APPENDIX I

PRELIMINARY DRAFT ARTICLES [1]

Article 1 *

USE OF TERMS

Except where otherwise expressly indicated, or where the context otherwise requires, the following terms in this Convention have the meanings given below:

(a) "Board" means the International Narcotics Control Board;

(b) "Commercial carrier" means a public or private entity engaged in transporting persons or goods for hire;

(c) "Commission" means the Commission on Narcotic Drugs of the Council;

(d) "Controlled delivery" means the passage through the territory of one or more Parties, with the knowledge and under the surveillance of their law enforcement agencies, of illicit consignments of controlled substances, for the purpose of monitoring their movement and identifying and bringing to justice the individuals, corporations or other legal entities involved in their shipment, transportation, delivery, concealment or receipt;

(e) "Controlled substances" means any of the drugs in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and of that Convention as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, all parts of the cannabis plant not included in Schedule I of those Conventions, any of the substances in Schedules I, II, III, and IV of the 1971 Convention on Psychotropic Substances, and the specific chemicals in List A and List B of this Convention;

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* Refers to element (a)

[1] Source: U.N. Document E/CN .7/1987/2, 13 June 1986. "Preparation of a draft convention against illicit traffic in narcotic drugs and psychotropic substances. Report of the Secretary-General."

(f) "Council" means the Economic and Social Council of the United Nations;

(g) "Forfeiture" means the deprivation of proceeds by court order;

(h) "Freezing" means prohibiting the transfer, conversion, disposition or movement of proceeds by order of a court or other appropriate authority;

(i) "Illicit traffic" means the cultivation, production, manufacture, extraction, preparation, offering, offering for sale, distribution, possession with the intent to distribute, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch through the mails, dispatch in transit, transport, importation and exportation of any controlled substance contrary to the provisions of this Convention. The organization, management, financing or facilitating of the aforementioned operations or activities are also considered as illicit traffic for the purposes of this Convention.

(j) "Laundering" means the concealment or disguise of the true nature, source, disposition, movement or ownership of proceeds and includes the movement or conversion of proceeds by electronic transmission;

(k) "Legitimate third party" means any person, corporation or other legal entity who, acting bona fide and without knowledge of incriminating circumstances, has lawfully acquired the right to own, use, control or possess proceeds;

(l) "List A" and "List B" mean the correspondingly designated lists of specific chemicals annexed to this Convention, as amended from time to time in accordance with article 8 of this Convention;

(m) "Party" means a State that has consented to be bound by this Convention and for which this Convention is in force.

(n) "Proceeds" means property of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing title to, or interest in, such property;

(o) "Secretary-General" means the Secretary-General of the United Nations;

(p) "Seizure" means assuming custody or control of proceeds as directed by order of a court or other appropriate authority;

(q) "Specific chemical" means a substance in List A or List B of this Convention used in the illicit processing or manufacture of narcotic drugs or psychotropic substances;

(r) "Tracing" means determining the true nature, source, disposition, movement or ownership of proceeds;

(s) "Transit State" means a State which, while not being a major producer, manufacturer or consumer of narcotic drugs or psychotropic substances, is nevertheless adversely affected by the illicit traffic in transit through its territory.

Article 7 *

PENAL PROVISIONS - ADEQUACY OF SANCTIONS

1. Subject to its constitutional limitations, legal system and domestic law, each Party shall adopt such measures as may be necessary to establish as serious offences under its criminal law:

(a) Illicit traffic;

(b) Manufacture, distribution or possession of materials or equipment intended for use in the illicit production or manufacture of narcotic drugs or psychotropic substances;

(c) Acquisition, possession, transfer or laundering of proceeds derived from or used in the illicit traffic;

(d) Intentional participation in, conspiracy to commit, attempts to commit, and aiding, abetting and counselling the commission of any offences under subparagraphs (a), (b), and (c).

2. Offences enumerated in paragraph 1 of this article shall be made liable to adequate punishment, including in particular:

(a) Imprisonment or other forms of deprivation of liberty for a substantial period of time;

(b) Pecuniary penalties or fines commensurate to the nature and gravity of the offence;

(c) Forfeiture of all goods or property involved in the perpetration of the offence;

(d) Forfeiture of proceeds as provided in article 3 of this Convention;

3. The Parties shall take into consideration, where possible, as constituting aggravating circumstances for offences enumerated in paragraph 1 of this article:

(a) The involvement of organized criminal groups;

(b) The use of firearms or violence;

(c) The fact that the offender holds a public office;

(d) The victimization of minors.

4. Each of the offences enumerated in paragraph 1 of this article, if committed in different countries, shall be considered a distinct offence.

5. Foreign convictions for the offences enumerated in paragraph 1 of this article shall be taken into account for the purpose of establishing recidivism.

6. Offences enumerated in paragraph 1 of this article committed either by nationals or by non-nationals shall be prosecuted either by the Party in whose territory the offence was committed or by the Party in whose territory the offender is found.

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* Refers to element (i)

7. The Parties shall bear in mind the serious nature of offences enumerated in paragraph 1 of this article when considering the eventuality of early release or parole of persons convicted of such offences, and shall endeavour to establish adequate provisions governing the statute of limitations applicable to offences related to the illicit traffic so as to deter potential criminals from engaging in this type of criminal activity.

8. The Parties shall take appropriate measures, consistent with their legal systems, to ensure that a person charged with an offence specified in paragraph 1 of this article, or whose extradition is sought under article 4 of this Convention, is present at the necessary proceedings. In this regard the Parties shall bear in mind the large sums of money available to traffickers when setting bail.

Article 3 *

IDENTIFICATION, TRACING, FREEZING, SEIZURE AND FORFEITURE OF THE PROCEEDS OF ILLICIT TRAFFIC

1. The Parties undertake to prevent and repress the acquisition, possession, transfer or laundering of the proceeds derived from or used in the illicit traffic. To that end, they shall:

(a) Adopt national legislative and administrative measures to facilitate the identification, tracing, freezing, seizure and forfeiture of proceeds;

(b) Facilitate effective co-ordinated action at the national level;

(c) Provide each other with appropriate assistance.

2. Subject to its constitutional limitations, each Party shall treat as a punishable offence the acquisition, possession, transfer or laundering of proceeds with the knowledge that such proceeds were obtained or derived directly or indirectly from the illicit traffic, irrespective of where such traffic occurred.

3. Having due regard to its constitutional, legal and administrative systems, each Party shall:

(a) Authorize a court of criminal or civil jurisdiction or other appropriate authority, upon application on its own behalf or on behalf of another Party, to issue an order to freeze and seize proceeds if the court or appropriate authority is satisfied that a punishable offence referred to in paragraph 2 of this article has been committed in any jurisdiction, and when the proceeds are within its own jurisdiction. Freezing or seizing orders:

(i) Shall prohibit the transfer, conversion, disposition or movement of the proceeds;

(ii) May be made prior to the institution of formal charges but subject to a reasonable time limit;

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* Refers to element (b)

(iii) May be modified where circumstances so require upon motion brought by any person having an interest in the proceeds;

(iv) May provide for the appointment of an administrator or trustee authorized to sell, control or manage the proceeds;

(v) May be issued notwithstanding that the proceeds may be intermingled with other property or assets acquired from other legitimate sources;

(b) Authorize a court of criminal or civil jurisdiction to order the forfeiture of proceeds whether or not such proceeds are already the subject of a freezing or seizing order:

(i) When a person has been convicted in any jurisdiction of an offence referred to in paragraph 2 of this article and the court finds the proceeds in question to be the direct or indirect result of illicit traffic;

(ii) Notwithstanding the absence of any prosecution or conviction, when the court, upon application on behalf of the Party or on behalf of another Party, is satisfied that the owner had knowledge that the proceeds were derived directly or indirectly from the illicit traffic in any jurisdiction or used for such traffic in any jurisdiction.

(c) Ensure that in any criminal or civil proceeding concerning offences referred to in paragraph 2 of this article, or for a freezing or seizing order referred to in paragraph 3(a) of this article, or for an order of forfeiture referred to in paragraph 3(b) of this article, the court, in seeking to establish that the proceeds were knowingly derived directly or indirectly from the illicit traffic, shall take into consideration evidence establishing:

(i) That a person, association of persons, corporation or other legal entity was connected with an offence referred to in paragraph 2 of this article;

(ii) That at or about the same time, the person, association of persons, corporation or other legal entity acquired any proceeds;

(iii) That in relation to the value of the proceeds the person, association of persons, corporation or other legal entity had no apparent legitimate source of income to justify their acquisition;

(d) Ensure that any criminal or civil proceedings concerning offences referred to in paragraph 2 of this article, or for a freezing or seizing order referred to in paragraph 3(a) of this article, or for an order of forfeiture referred to in paragraph 3(b) of this article, will not be adversely affected by the fact that proceeds derived from or used in the illicit traffic are intermingled with property or assets acquired from legitimate sources. Forfeiture may be related to only that portion of the proceeds derived from or used in the illicit traffic.

4. The provisions of this article shall not be construed as prejudicing the rights or interests of legitimate third parties.

Article 4 *

EXTRADITION

1. This article shall apply to the offences enumerated in paragraph 1 of article 2 of this Convention.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies.

4. Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves, subject to the conditions provided for by the law of the requested Party.

5. A request for extradition with respect to any of the offences to which this article applies shall not be refused:

(a) On the ground that the person sought is a national of the requested Party, unless such refusal is required by the constitution of the requested Party;

(b) On the ground that the offence was committed outside the territory of the requesting Party if the offence was intended to have or had effects within the territory of the requesting Party;

(c) On the ground that the offence was political in character or was politically motivated.

6. If extradition is refused, the requested Party shall have jurisdiction over the offence and shall without undue delay try the person whose extradition was refused in the same manner as in the case of an offence committed in its territory.

7. The Party in whose territory the offender is found shall also have jurisdiction over the offences committed outside its territory, if the Party in whose territory the offence was committed does not request extradition, provided that the offence is, in principle, extraditable and that the latter Party has full knowledge of the whereabouts of the offender, or if extradition was, without effect, offered to that Party.

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* Refers to element (c)

8. The Parties agree that the existence of evidence providing reasonable grounds to believe that the person whose extradition is sought committed any of the offences to which this article applies shall be considered sufficient to support a request for extradition.

9. In cases of concurrent jurisdiction of the requesting and requested Parties over an offence to which this article applies, extradition shall not be refused if the requesting Party is in a better position to establish relevant facts and bring the offender to justice.

10. The Parties shall consider entering into bilateral and regional agreements to carry out or to enhance the effectiveness of extradition as a means of bringing to justice persons accused of offences to which this article applies.

Article 5 *

MUTUAL LEGAL ASSISTANCE

1. Having due regard to their constitutional, legal and administrative systems, the Parties shall afford one another, upon request and in accordance with the provisions of this article, the widest measure of mutual legal assistance in all investigations, prosecutions and other judicial proceedings relating to offences enumerated in paragraph 1 of article 2 of this Convention which fall within the jurisdiction of the requesting Party.

2. The Parties undertake to adopt legislative and administrative measures as may be necessary within their domestic legal systems to ensure that efffective assistance as envisaged in this article may be rendered to other Parties at their request.

3. Mutual legal assistance shall include, but not necessarily be limited to:
(a) Taking evidence;
(b) Effecting service of judicial documents and records;
(c) Executing requests for searches and seizures;
(d) Examining objects and sites;
(e) Locating or identifying witnesses, suspects or other persons;
(f) Exchanging information and objects;
(g) Providing relevant documents and records, including bank, financial, corporate and business records.

4. The Parties shall give favourable consideration to the possiblity of:
(a) Transferring to one another proceedings for criminal prosecution in cases where such transfer may help to ensure that all persons who commit offences punishable under this Convention are brought to justice;
(b) Transferring persons in custody whose evidence is material to a prosecution or other judicial proceeding for testimonial purposes.

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* Refers to element (g)

5. Each Party shall designate an appropriate authority to facilitate or execute requests for mutual legal assistance. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties.

6. The designated authorities shall communicate directly with each other for the execution of requests made under the provisions of this article. The designated authority shall, when necessary, appoint an agency to execute such requests.

7. Requests for mutual legal assistance shall be made in writing by the authority or by the agency of the requesting Party to the authority of the requested Party.

8. Requests for mutual legal assistance shall contain such information as the requested Party may require, including:

(a) The title of the authority making the request;

(b) The object of, and the reason for, the request;

(c) An outline of any procedural requirements essential to the requesting Party;

(d) Requirements for confidentiality, where necessary.

9. A request shall be executed in accordance with the law of the requested Party and, to the extent not precluded by the law of the requested Party, in accordance with the procedural requirements specified in the request.

10. The requesting Party shall not disclose or use information or evidence furnished by the requested Party for purposes other than those stated in the request without the prior consent of the requested Party. The requesting Party may require that the requested Party keep confidential the substance of the request except to the extent necessary to execute the request.

11. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article; or

(b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security or other essential interests.

12. Mutual legal assistance may be postponed on the ground that it interferes with an ongoing investigation or prosecution. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can be given subject to such terms and conditions as the requested Party deems necessary.

13. The Parties shall carry out their obligations under the provisions of this article in conformity with any treaties of mutual legal assistance that may exist between them and consider, as may be necessary, the possibility of concluding bilateral or regional agreements that would serve the purposes, and give practical effect to the provisions of, this article.

Article 6 *

LAW ENFORCEMENT CO-OPERATION AND TRAINING

1. Having due regard to their constitutional, legal and administrative systems, the Parties shall co-operate closely with each other with a view to enhancing the effectiveness of law enforcement action to suppress the illicit traffic. They shall, in particular:

(a) Establish and maintain channels of communication between law enforcement agencies, including customs services, to facilitate the secure and rapid exchange of information concerning, inter alia:

(i) The identity, whereabouts and activities of known or suspected traffickers;

(ii) The methods employed by traffickers;

(iii) The movement of proceeds that may be derived from or used in the illicit traffic;

(iv) The ownership and the utilization of means of transport suspected of being used in the illicit traffic;

(b) Assist each other in conducting inquiries or obtaining evidence with respect to investigations concerning cases of illicit traffic. The transfer, in an expeditious manner, of samples of controlled substances for evidentiary or analytical purposes, shall be considered in appropriate cases.

2. The Parties shall, to the extent necessary, initiate, develop or improve training programmes for their law enforcement, customs and other personnel charged with the suppression of the illicit traffic. Such programmes shall deal, in particular, with the following:

(a) Methods used in the detection of the illicit traffic;

(b) New routes and techhiques used by traffickers, particularly in transit States, and appropriate countermeasures;

(c) Monitoring of the import and export of controlled substances;

(d) Detection and monitoring of the flow of proceeds derived from or used in the illicit traffic;

(e) Methods used in laundering such proceeds;

(f) Collection of evidence.

3. The Parties shall assist each other to plan and implement training programmes designed to share expertise, in particular, on:

(a) The methodology of illicit traffic;

(b) Methods used in laundering proceeds derived from or used in the illicit traffic;

(c) Law enforcement techniques such as controlled delivery, search techniques, forensic accounting, electronic surveillance and chemical analysis.

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* Refers to element (f)

4. The Parties shall facilitate effective co-ordination between their respective law enforcement agencies and, in that context, shall consider allowing the posting of liaison officers from other Parties within their borders and promoting the exchange of personnel and other experts on the illicit traffic.

5. The Parties shall endeavour, directly or through competent international organizations, to establish programmes of technical co-operation for the benefit of all Parties, with due regard to the special needs of those which are transit States, to improve channels of communication and to provide technical aids when requested.

6. The Parties shall consider entering into bilateral and regional agreements to promote co-operation aimed at the suppression of the illicit traffic.

7. The Parties shall envisage the organization of regular regional and international conferences and seminars for law enforcement, customs and other personnel designed to stimulate co-operation, allow discussion on problems of mutual concern, including the special problems of transit States, and exchange information on new trends in the illicit traffic and methods used to suppress it.

Article 7 *

CONTROLLED DELIVERY

1. Having due regard to their constitutional, legal and administrative systems, the Parties shall take the necessary measures to allow for the appropriate use of controlled delivery in order to identify and bring to justice the individuals, corporations or other legal entities involved in the shipment, transportation, delivery, concealment or receipt of illicit consignments of controlled substances.

2. With a view to ensuring that the use of controlled delivery may be effectively co-ordinated at the national and international levels, the Parties shall consider designating an appropriate authority for such co-ordination. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties.

3. Decisions to use controlled delivery shall be made on a case-by-case basis.

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* Refers to element (h)

4. In order to ensure that appropriate security is maintained throughout the controlled delivery, the Parties shall provide:

(a) That the consignment be under continuous surveillance;

(b) That the Party in whose territory any immediate risk of loss arises intervenes as necessary;

(c) That any action by law enforcement agencies of the requesting Party be subject to the prior authorization of the Party having jurisdiction over the territory in which the controlled delivery takes place;

(d) That all or part of the controlled substances in the illicit consignment be replaced whenever possible with innocuous substances.

5. The Parties agree that the appropriate authorities of the country of origin and any transit country shall suspend the prosecution of offences arising from the illicit consignment committed within their jurisdiction, provided that the country of destination undertakes to initiate prosecution for offences committed within its jurisdiction within a reasonable period of time upon completion of the controlled delivery. The country of destination shall provide such evidence as is available and is necessary for prosecution in the country of origin, or in any transit country, for offences committed within the jurisdiction of such countries.

Article 8 *

MEASURES TO MONITOR OR CONTROL SPECIFIC CHEMICALS USED IN THE ILLICIT PROCESSING OR MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. The Parties shall take all necessary measures within their respective territories to prevent the diversion of specific chemicals used in the illicit processing or manufacture of narcotic drugs or psychotropic substances and shall co-operate with each other in conformity with the provisions of this article.

2. Where a Party has information which, in its opinion, may require the inclusion of a substance in List A or List B as a specific chemical used in the illicit processing or manufacture of narcotic drugs or psychotropic substances, it shall notify the Secretary-General and furnish him with the information in support of that notification.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties and to the Commission. The Parties shall communicate their comments concerning the notification to the Secretary-General and all supplementary information which may assist the Commission in taking a decision.

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* Refers to element (d)

4. The Commission, taking into account the comments submitted by Parties and bearing in mind all the factors it may consider relevant, may decide by a vote of two-thirds majority of its members to include a substance in List A or List B.

5. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to all non-member States which are Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party 180 days after the date of such communication.

6. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within 180 days after the date of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based;

(b) The Secretary-General shall transmit copies of the request for review and all the relevant information to the Commission and to all the Parties, inviting them to submit comments within 90 days. All comments received shall be submitted to the Council for consideration;

(c) The Council may confirm, alter or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all Member States of the United Nations, to non-member States which are Parties to this Convention, to the Commission and to the Board.

7. The procedure described in paragraphs 2-6 of this article shall also apply, mutatis mutandis, when a Party has information supporting the deletion of a specific chemical from List A or List B.

8. The Parties shall consider taking measures, consistent with their domestic laws, to license or otherwise control domestic manufacture and use of specific chemicals, including prohibiting such manufacture or use where there is no licit need for it.

9. With respect to specific chemicals in List A, each Party shall:

(a) Limit import and export to licit needs;

(b) Require that import and export be licensed by appropriate authorities;

(c) Inform in advance other Parties to whom exports are destined of the nature, quantities and consignees of such exports;

(d) Require that records of imports and exports be maintained by importers and exporters for at least five years and be available for inspection by appropriate authorities;

(e) Require correct labelling of shipments;

(f) Encourage producers, importers, exporters and end-users to inform authorities of suspicious imports or exports;

(g) Notify the Party of destination of a shipment when there are grounds to suspect that the shipment will be used for illicit processing or manufacture of narcotic drugs or psychotropic substances;

(h) Seize illicit imports and exports.

10. With respect to specific chemicals in List B, each Party shall:

(a) Require that imports and exports be properly labelled and documented. Documentation shall include the non-proprietary name of the specific chemicals being imported or exported, the quantity being imported or exported, the name and address of the importer, exporter and ultimate consignee, and the period during which the import or export is to take place;

(b) Require that records of imports and exports referred to under subparagraph (a) be maintained at least five years and be made available for inspection by appropriate authorities ;

(c) Encourage producers, importers, exporters and end-users to inform authorities of suspicious imports or exports;

(d) Monitor trade in order to identify suspicious transactions;

(e) Notify the Party of destination of a shipment when there are grounds to suspect that the shipment will be used for the illicit processing or manufacture of narcotic drugs or psychotropic substances;

(f) Seize any such specific chemicals if there is sufficient evidence that they are intended for illicit use.

11. The Parties shall notify the Board of all detected cases of actual or intended illicit manufacture of narcotic drugs or psychotropic substances, including information on the types and quantities of specific chemicals seized or used, their origin, if known, and the manufacturing process involved.

Article 9 *

MATERIALS AND EQUIPMENT

1. The Parties shall co-operate to suppress trade in materials and equipment intended for use in the manufacture of narcotic drugs and psychotropic substances.

2. The Parties shall require that the intention to export a tableting or encapsulating machine be reported in advance to an appropriate authority. If such a machine is to be exported to another Party, the authority of the Party of origin shall notify the Party of destination of the particulars of the transaction.

3. The Parties shall consider requiring:

(a) The registration with the appropriate authority of tableting and encapsulating machines;

(b) The notification to said authority of the domestic sale or other disposition of such machines.

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* Refers to element (m)

Article 10 *

MEASURES TO ERADICATE NARCOTIC PLANTS CULTIVATED ILLICITLY

1. The Parties shall adopt appropriate measures to prevent the illicit cultivation of and to take effective action to eradicate any opium poppy, coca bush and cannabis plants that may be cultivated illicitly in their territories. Due regard shall be given to biological and ecological considerations.

2. The Parties shall co-operate to increase the effectiveness of eradication efforts, including the techniques of crop substitution and integrated rural development, taking into account the various types and extent of resources available to them as well as the socio-economic conditions prevailing in the areas of illicit cultivation. Parties with common frontiers shall seek to co-operate in eradication programmes in areas along those frontiers.

Article 11 **

COMMERCIAL CARRIERS

1. The Parties shall undertake to increase security at international ports and to ensure by appropriate measures that means of transport operated by commercial carriers are not used in the illicit traffic. Such measures shall include thorough searches of all means of transport suspected of containing evidence of illicit traffic.

2. The Parties shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for illicit traffic and shall impose adequate penalties for failure to do so. Penalties shall include the possible forfeiture of the means of transport if it is established that the commercial carrier had knowledge that it was used for illicit traffic. Nevertheless, provided all reasonable precautions have been taken, the commercial carrier shall not held responsible if the illicit nature of the shipment has been misrepresented by the consignor.

3. The Parties shall seek to ensure that commercial carriers:
(a) Train their personnel to identify suspicious shipments or persons;
(b) Limit access to means of transport and cargo at international ports;
(c) Promote employee integrity;
(d) Provide cargo manifests in advance of arrival in port, when possible;
(e) Schedule, when possible, the arrival of means of transport so as to facilitate effective customs processing;
(f) Use tamper-proof individually verifiable seals on containers.

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* Refers to element (k)
** Refers to element (e)

4. The Parties agree that it shall not be considered unreasonable to delay the departure of a commercial aircraft in order to undertake a thorough search for evidence of illicit traffic. Searches shall be conducted with the assistance of qualified maintenance personnel when necessary in order to maintain air worthiness.

5. Nothing in this article shall be construed so as to preclude a commercial carrier from concluding special arrangements with a customs or law enforcement agency to prevent or suppress the illicit traffic.

Article 12 *

ILLICIT TRAFFIC BY SEA

1. The Parties shall co-operate to the fullest extent possible to suppress the illicit traffic in controlled substances by sea.

2. A Party which has reasonable grounds to suspect that a vessel registered under its laws is being used for the illicit traffic in controlled substances may request the assistance of other Parties in suppressing its use for that purpose. Parties so requested shall render such assistance, within the means available to them.

3. A Party which has reasonable grounds to believe that a vessel is engaged in illicit traffic and is on the high seas as defined in Part VII of the United Nations Convention on the Law of the Sea may board, search and seize such a vessel if:

(a) The vessel is registered under its laws; or

(b) That Party seeks and receives permission from the Party of registry; or

(c) The vessel is not displaying a flag or markings of registry.

4. A Party shall respond in an expeditious manner to requests from another Party to determine, for the purposes of paragraph 3 of this article, whether a vessel is registered under its laws, and to requests for permission made pursuant to the provisions in that paragraph. Each Party shall designate an authority to receive and act upon such requests. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties.

5. Where evidence of illicit traffic is found, the Party having custody of the vessel shall take appropriate action with respect to the vessel and persons on board, in accordance with:

(a) Its own judicial requirements if the vessel is registered under its laws; or

(b) Existing bilateral treaties, where applicable, or any agreement or arrangement otherwise reached at the time of seizure with the Party of registry.

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* Refers to element (j)

6. The right to challenge the nature or effect of the agreement or arrangement referred to in paragraph 5(b) of this article shall rest exclusively with the Party of registry.

7. The Parties shall consider entering into bilateral and regional agreements to carry out, or to enhance the effectiveness of, the provisions of this article.

Article 13 *

FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress the illicit traffic in controlled substances in free trade zones and in free ports substantially equivalent to or more stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

(a) To monitor the movement and transshipment of goods in free trade zones and free ports, and, to that end, empower appropriate authorities to search incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles;

(b) To establish a detection system to identify suspicious substances passing in or out of those areas.

(c) To maintain patrols in harbour and dock areas and at airports and border control points in those areas;

(d) To provide for special training of the officials in charge of control in those areas;

Article 14 **

PREVENTION OF THE USE OF THE MAILS FOR ILLICIT TRAFFIC

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and having due regard for their constitutional, legal and administrative systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall co-operate with each other to that end.

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* Refers to element (l)
** Refers to element (n)

2. Measures referred to in paragraph 1 of this article shall include, but may not be limited to:

(a) A co-ordinated preventive and repressive action to discourage the use of the mails for illicit traffic;

(b) Introducing and maintaining investigative techniques designed to detect controlled substances in the mails;

(c) Legislative measures designed to enable the use of appropriate means to secure evidence required for judicial proceedings.

APPENDIX II

U.S. PROPOSALS AND COMMENTS TO PRELIMINARY DRAFT ARTICLES (OCTOBER 30, 1986)

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INM:DGRAHAM
10/30/86 EXT. 76642
INM:JMDION

L/LEI:JDONOGHUE | L/UNA:RMEYER

IMMEDIATE UNVIE MISSION VIENNA

E.O. 12356: N/A

TAGS: SNAR, UN

SUBJECT: DRAFT NARCOTICS CONVENTION - US PROPOSALS AND COMMENTS

1. MISSION IS REQUESTED TO DELIVER TEXT OF US PROPOSALS AND COMMENTS SET OUT BELOW TO DND ASAP. PLEASE ADVISE DND THAT US WILL SUBMIT MORE EASILY READABLE HARD COPY SHORTLY.

2. BEGIN TEXT:

COMMENTS OF THE UNITED STATES OF AMERICA
ON THE DRAFT CONVENTION AGAINST
ILLICIT TRAFFIC IN NARCOTIC DRUGS AND
PSYCHOTROPIC SUBSTANCES

THE UNITED STATES OF AMERICA HAS CAREFULLY STUDIED THE DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES CONTAINED IN THE REPORT OF THE SECRETARY-GENERAL OF JUNE 13, 1986 (HEREINAFTER, THE "SECRETARIAT DRAFT"). THE UNITED STATES COMMENDS THE SECRETARIAT FOR ITS EXCELLENT WORK IN THE PREPARATION OF THE DRAFT CONVENTION AND SUBMITS HEREWITH ITS COMMENTS ON THE SECRETARIAT DRAFT.

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ONLY THOSE ARTICLES IN WHICH THE UNITED STATES FAVORS REVISIONS ARE INCLUDED IN THE UNITED STATES COMMENTS. THE REMAINING ARTICLES ARE ACCEPTABLE TO THE UNITED STATES AS THEY APPEAR IN THE SECRETARIAT DRAFT. IN ADDITION, WHERE THE CHANGE SUGGESTED BY THE UNITED STATES WARRANTS FURTHER EXPLANATION, THE UNITED STATES HAS PROVIDED BRIEF COMMENTARY.

ARTICLE 1

USE OF TERMS

EXCEPT WHERE OTHERWISE EXPRESSLY INDICATED, OR WHERE THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS IN THIS CONVENTION HAVE THE MEANINGS GIVEN BELOW:

(A) "BOARD" MEANS THE INTERNATIONAL NARCOTICS CONTROL BOARD;

(A) (BIS) "CARRIER" MEANS A PUBLIC OR PRIVATE ENTITY ENGAGED IN TRANSPORTING PERSONS OR GOODS;

(B) "COMMERCIAL CARRIER" MEANS A PUBLIC OR PRIVATE ENTITY ENGAGED IN TRANSPORTING PERSONS OR GOODS FOR HIRE;

(C) "COMMISSION" MEANS THE COMMISSION ON NARCOTIC DRUGS OF THE COUNCIL;

(D) "CONTROLLED DELIVERY" MEANS THE PASSAGE THROUGH THE TERRITORY OF ONE OR MORE PARTIES, WITH THE KNOWLEDGE AND UNDER THE SURVEILLANCE OF THEIR LAW ENFORCEMENT AGENCIES OF ILLICIT CONSIGNMENTS OF CONTROLLED SUBSTANCES OR SPECIFIC CHEMICALS, FOR THE PURPOSE OF MONITORING THEIR MOVEMENT AND IDENTIFYING AND BRINGING TO JUSTICE THE INDIVIDUALS, CORPORATIONS OR OTHER LEGAL ENTITIES INVOLVED IN THEIR PROCUREMENT, SHIPMENT, TRANSPORTATION, DELIVERY, CONCEALMENT OR RECEIPT;

(E) "CONTROLLED SUBSTANCES" MEANS ANY OF THE DRUGS IN SCHEDULES I AND II OF THE SINGLE CONVENTION ON NARCOTIC

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UNCLASSIFIED AND OF THAT CONVENTION AS AMENDED BY THE ING THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, AND OF THAT CONVENTION AS AMENDED BY THE 1972 PROTOCOL AMENDING THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, ALL PARTS OF THE CANNABIS PLANT NOT INCLUDED IN SCHEDULE I OF THOSE CONVENTIONS, AND ANY OF THE SUBSTANCES IN SCHEDULES I, II, III, AND IV OF THE 1971 CONVENTION ON PSYCHOTROPIC SUBSTANCES.

(F) "COUNCIL" MEANS THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS;

(G) "FORFEITURE" MEANS THE DEPRIVATION OR TRANSFER OF LEGAL OWNERSHIP OR POSSESSION OF PROCEEDS OR INSTRUMENTALITIES BY ORDER OF A COURT OR ANY OTHER LEGALLY AUTHORIzED PROCEDURE.

(H) "FREEzING" MEANS PROHIBITING THE TRANSFER OF LEGAL OWNERSHIP, POSSESSION OR MOVEMENT OF PROCEEDS OR INSTRUMENTALITIES BY ORDER OF A COURT OR ANY OTHER LEGALLY AUTHORIzED PROCEDURE.

(I) "ILLICIT TRAFFIC" MEANS THE CULTIVATION, PRODUCTION, MANUFACTURE, EXTRACTION, PREPARATION, OFFERING, OFFERING FOR SALE, DISTRIBUTION, POSSESSION WITH INTENT TO DISTRIBUTE, PURCHASE, SALE, DELIVERY ON ANY TERMS WHATSOEVER, BROKERAGE, DISPATCH, DISPATCH THROUGH THE MAILS, DISPATCH IN TRANSIT, TRANSPORT, IMPORTATION AND EXPORTATION OF ANY CONTROLLED SUBSTANCE, OR SPECIFIC CHEMICALS CONTRARY TO THE LAW OR REGULATIONS OF A PARTY. THE ORGANIzATION, MANAGEMENT, FINANCING OR FACILITATING OF THE AFOREMENTIONED OPERATIONS OR ACTIVITIES ARE ALSO CONSIDERED AS ILLICIT TRAFFIC FOR THE PURPOSE OF THIS CONVENTION.

(I) (BIS) "INSTRUMENTALITIES" MEANS ANY AND ALL PROPERTY WHETHER CORPOREAL OR INCORPOREAL, MOVEABLE OR IMMOVABLE, TANGIBLE OR INTANGIBLE, AND DEEDS AND INSTRUMENTS EVIDENCING TITLE TO, OR INTEREST IN SUCH PROPERTY, USED OR INTENDED TO BE USED TO FURTHER ILLICIT TRAFFIC IN ANY WAY.

(J) "LAUNDERING" MEANS A TRANSACTION OR OTHER PROCESS INVOLVING THE PROCEEDS OF ILLICIT TRAFFIC DESIGNED FOR THE PURPOSE OF (1) PROMOTING THE CARRYING ON OF FURTHER

UNLAWFUL ACTIVITIES; (2) CONCEALING OR DISGUISING THE NATURE, LOCATION, SOURCE, OWNERSHIP OR CONTROL OF THOSE PROCEEDS; OR (3) OTHERWISE FACILITATING THE FURTHER MOVEMENT, USE, CONVERSION, INVESTMENT OR OTHER ENJOYMENT OF THOSE PROCEEDS.

{K} {DELETE}

{L} "LIST A" AND "LIST B" MEAN THE CORRESPONDINGLY DESIGNATED LISTS OF SPECIFIC CHEMICALS ANNEXED TO THIS CONVENTION, AS AMENDED FROM TIME TO TIME IN ACCORDANCE WITH ARTICLE 8 OF THIS CONVENTION;

{L} {BIS} "MEANS OF TRANSPORT" MEANS ANY LAND, SEA, OR AIR CONVEYANCE.

{M} "PARTY" MEANS A STATE THAT HAS CONSENTED TO BE BOUND BY THIS CONVENTION AND FOR WHICH THIS CONVENTION IS IN FORCE.

{N} "PROCEEDS" MEANS ANY AND ALL PROPERTY WHETHER CORPOREAL OR INCORPOREAL, MOVABLE OR IMMOVABLE, TANGIBLE OR INTANGIBLE AND ANY DEEDS AND INSTRUMENTS EVIDENCING TITLE TO, OR INTEREST IN, SUCH PROPERTY DERIVED DIRECTLY OR INDIRECTLY FROM ILLICIT TRAFFIC.

{O} "SECRETARY-GENERAL" MEANS THE SECRETARY-GENERAL OF THE UNITED NATIONS;

{P} "SEIZURE" MEANS ASSUMING CUSTODY OR CONTROL OF PROCEEDS OR INSTRUMENTALITIES AS DIRECTED BY ORDER OF A COURT OR OTHER LEGALLY AUTHORIZED PROCEDURE.

{Q} "SPECIFIC CHEMICALS" MEANS A SUBSTANCE IN LIST A OR LIST B OF THIS CONVENTION USED IN THE ILLICIT PROCESSING OR MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES;

{R} "TRACING" MEANS DETERMINING THE TRUE NATURE, SOURCE, DISPOSITION, MOVEMENT OR OWNERSHIP OF PROCEEDS OR INSTRUMENTALITIES;

{S} "TRANSIT STATE" MEANS A STATE THROUGH WHICH NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES ARE TRANSPORTED.

COMMENTARY:

SUBPARAGRAPH {A} {BIS} - A DEFINITION OF "CARRIER" IS ADDED.

SUBPARAGRAPH (E) - THE PHRASE "AND THE SPECIFIC CHEMICALS IN LIST A AND LIST B OF THIS CONVENTION" IS DELETED. SINCE THE SCOPE OF CONTROL AND THE CONTROL MECHANISMS CONCERNING "SPECIFIC CHEMICALS" ARE LIMITED AND QUITE DISTINCT FROM THE CONTROL MECHANISMS OF THE EXISTING CONVENTIONS, IT MAY NOT BE WISE TO INCLUDE THEM IN THE DEFINITION OF "CONTROLLED SUBSTANCES." TO ASSURE THAT VIOLATIONS INVOLVING "SPECIFIC CHEMICALS" ARE COVERED BY THE PROPOSED DRAFT, THE UNITED STATES HAS ADDED THE PHRASE "OR SPECIFIC CHEMICALS" TO THE DEFINITION OF "ILLICIT TRAFFIC" IN SUBPARAGRAPH (I).

SUBPARAGRAPHS (G), (H) - THE UNITED STATES BELIEVES THAT THE DEFINITIONS OF "FORFEITURE" AND "FREEZING" SHOULD BE EXPANDED TO ENCOMPASS PROCEDURES OTHER THAN COURT ORDERS, SUCH AS ADMINISTRATIVE PROCEDURES.

SUBPARAGRAPH (I) (BIS) - THE UNITED STATES RECOMMENDS THE ADDITION OF A DEFINITION OF THE WORD "INSTRUMENTALITIES." THE WORD REFERS TO PROPERTY USED OR INTENDED TO BE USED TO FURTHER ILLICIT TRAFFIC. AN EXAMPLE OF AN INSTRUMENTALITY IS AN AIRPLANE USED IN ILLICIT TRAFFIC. SUCH AIRPLANE WOULD NOT BE A "PROCEED" OF ILLICIT TRAFFIC IF IT HAD BEEN ACQUIRED WITH OTHER THAN ILLICITLY OBTAINED FUNDS. THE UNITED STATES CONSIDERS THAT DEPRIVING TRAFFICKERS OF SUCH INSTRUMENTALITIES IS IMPORTANT TO THE FIGHT AGAINST NARCOTICS TRAFFICKING. ACCORDINGLY, WHERE APPROPRIATE, THE UNITED STATES RECOMMENDS THE ADDITION OF "INSTRUMENTALITIES" WHERE THE WORD "PROCEEDS" IS NOW USED.

SUBPARAGRAPH (K) (DELETED) - THE UNITED STATES DOES NOT BELIEVE A DEFINITION OF "LEGITIMATE THIRD PARTY" IS NECESSARY.

SUBPARAGRAPH (L) (BIS) - DEFINITION OF "MEANS OF TRANSPORT".

SUBPARAGRAPH (N) - THE UNITED STATES FAVORS A DEFINITION OF "PROCEEDS" THAT IS LIMITED TO PROPERTY DERIVED FROM ILLICIT TRAFFIC. SUCH A DEFINITION WOULD AVOID THE NEED TO REPEAT THE REFERENCE TO ILLICIT TRAFFIC EVERY TIME THAT THE WORD "PROCEEDS" IS USED.

SUBPARAGRAPH (S) - ANY STATE, WITHOUT REGARD TO WHETHER OR NOT IT IS A PRODUCER, MANUFACTURER OR CONSUMER OF DRUGS, CAN BE USED AS A TRANSIT STATE. THE DEFINITION OF "TRANSIT STATE" SHOULD NOT BE LIMITED AS IT IS IN THE SECRETARIAT DRAFT.

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ARTICLE 2

PENAL PROVISIONS - ADEQUACY OF SANCTIONS

1. EACH PARTY SHALL TAKE SUCH MEASURES AS ARE NECESSARY TO ESTABLISH AS SERIOUS OFFENSES UNDER ITS CRIMINAL LAW:

(A) ILLICIT TRAFFIC;

(B) VIOLATION OF MEASURES TAKEN BY PARTIES PURSUANT TO ARTICLES 5 AND 9 OF THIS CONVENTION;

(C) ACQUISITION, POSSESSION, TRANSFER OR LAUNDERING OF PROCEEDS OR INSTRUMENTALITIES DERIVED FROM OR USED IN THE ILLICIT TRAFFIC;

(D) INTENTIONAL PARTICIPATION IN, CONSPIRACY TO COMMIT, ATTEMPTS TO COMMIT, AND AIDING, ABETTING, CAUSING, OR COUNSELLING THE COMMISSION OF ANY OF THE OFFENSES UNDER SUBPARAGRAPHS (A), (B), AND (C).

2. THE OFFENSES ENUMERATED IN PARAGRAPH 1 OF THIS ARTICLE SHALL BE MADE LIABLE TO ADEQUATE PUNISHMENT, INCLUDING IN PARTICULAR:

(A) IMPRISONMENT OR OTHER FORMS OF DEPRIVATION OF LIBERTY FOR A SUBSTANTIAL PERIOD OF TIME;

(B) PECUNIARY PENALTIES OR FINES COMMENSURATE TO THE NATURE AND GRAVITY OF THE OFFENSE;

(C) FORFEITURE OF PROCEEDS OR INSTRUMENTALITIES AS PROVIDED IN ARTICLE 3 OF THIS CONVENTION.

3. THE PARTIES SHALL TAKE INTO CONSIDERATION AS CONSTITUTING AGGRAVATING CIRCUMSTANCES IN DETERMINING PENALTIES FOR OFFENSES ENUMERATED IN PARAGRAPH 1 OF THIS ARTICLE:

(A) THE INVOLVEMENT OF ORGANIZED CRIMINAL GROUPS;
(B) THE USE OF FIREARMS OR VIOLENCE;
(C) THE FACT THAT THE OFFENDER HOLDS A PUBLIC OFFICE;
(D) THE VICTIMIZATION OF MINORS;
(E) THE INVOLVEMENT OF LARGE QUANTITIES OF CONTROLLED SUBSTANCES OR SPECIFIC CHEMICALS, MEASURED IN TERMS OF THEIR WEIGHT, THEIR PURITY, OR THEIR PHARMACOLOGICAL EFFECT;
(F) HARM TO THE PUBLIC HEALTH OR SAFETY OR THE THREAT THEREOF;

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{G} THE INVOLVEMENT OF BRIBERY OR CORRUPTION OF OFFICIALS;
{H} THE BREACH OF PROFESSIONAL DUTY OR RESPONSIBILITY;
{I} THE GAIN REALIzED BY THE OFFENDER FROM THE OFFENSE;
{J} PRIOR CONVICTIONS, WHETHER FOREIGN OR DOMESTIC;
{K} OTHER AGGRAVATING CIRCUMSTANCES PROVIDED FOR BY THE DOMESTIC LAW OF A PARTY.

4. WHEN ILLICIT TRAFFIC INVOLVES A SERIES OF RELATED ACTIONS, EACH SUCH ACTION SHALL CONSTITUTE A SEPARATE OFFENSE THAT COULD FORM THE BASIS FOR THE EXERCISE BY A PARTY OF ITS CRIMINAL JURISDICTION OR FOR A REQUEST FOR EXTRADITION.

4. {BIS} {A} EACH PARTY SHALL ESTABLISH ITS JURISDICTION OVER THE OFFENSES ENUMERATED IN PARAGRAPH 1 OF THIS ARTICLE WHEN:

--{I} THE OFFENSE IS COMMITTED IN THE TERRITORY OF THAT PARTY; OR

--{II} THE OFFENSE IS COMMITTED ON BOARD A VESSEL OR AIRCRAFT REGISTERED UNDER THE LAWS OF THAT PARTY;.

{B} EACH PARTY MAY ESTABLISH ITS JURISDICTION OVER THE OFFENSES ENUMERATED IN PARAGRAPH 1 WHEN:

--{I} THE OFFENSE IS COMMITTED ON BOARD A VESEL SEIzED BY THAT PARTY PURSUANT TO ARTICLE 12 {3} OF THIS CONVENTION;

--{II} THE OFFENSE, THOUGH COMMITTED OUTSIDE ITS TERRITORY, WAS INTENDED TO HAVE OR HAD EFFECTS WITHIN ITS TERRITORY; OR

--{III} THE ALLEGED OFFENDER IS PRESENT IN ITS TERRITORY AND THAT PARTY DOES NOT EXTRADITE THE OFFENDER PURSUANT TO A REQUEST SUBMITTED BY ANOTHER STATE.

{C} THIS CONVENTION DOES NOT EXCLUDE ANY CRIMINAL JURISDICTION EXERCISED IN ACCORDANCE WITH NATIONAL LAW.

5. {DELETE}

6. {DELETE}

7. THE PARTIES SHALL BEAR IN MIND THE SERIOUS NATURE OF THE OFFENSES ENUMERATED IN PARAGRAPH 1 OF THIS ARTICLE WHEN ESTABLISHING STATUTES OF LIMITATION APPLICABLE TO SUCH OFFENSES AND IN CONSIDERING EARLY RELEASE OR PAROLE OF PERSONS CONVICTED OF SUCH OFFENSES.

8. THE PARTIES SHALL TAKE MEASURES TO ENSURE THAT A PERSON CHARGED WITH ANY OF THE OFFENSES ENUMERATED IN PARAGRAPH 1 OF THIS ARTICLE, OR WHOSE EXTRADITION IS SOUGHT WITH RELATION TO ANY SUCH OFFENSE, IS PRESENT AT THE NECESSARY PROCEEDINGS.

COMMENTARY:
PARAGRAPH 1 - THE UNITED STATES DOES NOT CONSIDER THAT THE OBLIGATIONS CONTAINED IN THIS PARAGRAPH SHOULD BE QUALIFIED BY REFERENCE TO "CONSTITUTIONAL LIMITATIONS, LEGAL SYSTEM AND DOMESTIC LAW."

PARAGRAPH 2 - THE CONCEPTS IN SUBPARAGRAPHS (C) AND (D) ARE COMBINED IN NEW SUBPARAGRAPH (C).

PARAGRAPH 3 - ADDITIONAL AGGRAVATING CIRCUMSTANCES HAVE BEEN ADDED.

PARAGRAPH 4 - THE UNITED STATES RECOGNIZES THAT THE LANGUAGE OF PARAGRAPH 4, AS INCLUDED IN THE SECRETARIAT DRAFT, IS IDENTICAL TO THE LANGUAGE OF ARTICLE 36(2)(A)(I) OF THE SINGLE CONVENTION ON NARCOTIC DRUGS OF 1961. ITS INTENDED MEANING HERE, HOWEVER, IS UNCLEAR. THE UNITED STATES CONSIDERS THE WORD "OFFENSE," AS USED IN THIS CONVENTION, TO REFER TO EACH SEPARATE ELEMENT OF A CHAIN OF RELATED ACTIONS THAT MIGHT BE PART OF THE SAME TRANSACTION, EACH OF WHICH COULD BE THE BASIS FOR PROSECUTION OR FOR A REQUEST FOR EXTRADITION. IF THIS PARAGRAPH IS INTENDED TO MAKE THIS POINT CLEAR, IT MIGHT BE CLEARER IF IT READ AS SUGGESTED IN THE UNITED STATES DRAFT.

PARAGRAPH 4 (BIS) (NEW) - THE UNITED STATES CONSIDERS THAT THE CONVENTION WOULD BE STRENGTHENED BY INCLUSION OF A PROVISION MAKING CLEAR THE INSTANCES IN WHICH THE PARTIES WILL ESTABLISH ITS JURISDICTION OVER NARCOTICS OFFENSES. DRAWING IN PART FROM PARAGRAPH 6 OF THE SECRETARIAT DRAFT, THE UNITED STATES PROPOSES PARAGRAPH 4 (BIS) FOR THIS PURPOSE.

PARAGRAPH 5 - THE UNITED STATES BELIEVES THAT THIS POINT CAN BE COVERED MORE SUCCINTLY IN PARAGRAPH 3. IT IS ACCORDINGLY DELETED.

PARAGRAPH 6 - THIS QUESTION IS NOW COVERED IN NEW PARAGRAPH 4.

PARAGRAPH 8 - THE UNITED STATES RECOMMENDS DELETION OF THE LAST SENTENCE OF PARAGRAPH 8 THAT APPEARS IN THE

SECRETARIAT DRAFT. THAT SENTENCE PLACES UNDUE EMPHASIS ON THE FINANCIAL RESOURCES OF NARCOTRAFFICKERS, WITHOUT REFERENCE TO OTHER FACTORS, SUCH AS DANGER TO THE COMMUNITY, TO BE TAKEN INTO ACCOUNT. IN ADDITION, THE UNITED STATES FAVORS A PRESUMPTION AGAINST BAIL IN EXTRADITION CASES, A PRESUMPTION THAT MIGHT APPEAR TO BE UNDERCUT IF THE LAST SENTENCE WERE RETAINED.

ARTICLE 3

IDENTIFICATION, TRACING, FREEZING, SEIZURE AND FORFEITURE OF PROCEEDS AND INSTRUMENTALITIES

THE PARTIES UNDERTAKE TO PREVENT AND REPRESS THE ACQUISITION, POSSESSION, TRANSFER AND LAUNDERING OF THE PROCEEDS AND INSTRUMENTALITIES OF THE OFFENSES ENUMERATED IN ARTICLE 2(2) REGARDLESS OF WHERE THOSE OFFENSES OCCURRED. TO THAT END, THEY SHALL:

(A) TAKE NATIONAL MEASURES ESTABLISHING PROCEDURES FOR THE IDENTIFICATION, TRACING, FREEZING, SEIZURE AND FORFEITURE OF SUCH PROCEEDS AND INSTRUMENTALITIES

(B) PROVIDE, PURSUANT TO ARTICLES 5 AND 6, FOR THE EXPEDITED MUTUAL EXCHANGE OF INFORMATION AND EVIDENCE NECESSARY TO IDENTIFY, TRACE, LOCATE, FREEZE, SEIZE, AND FORFEIT SUCH PROCEEDS OR INSTRUMENTALITIES

(C) AUTHORIZE COURTS OF CRIMINAL OR CIVIL JURISDICTION OR OTHER APPROPRIATE AUTHORITIES TO:

--(I) FREEZE AND SEIZE SUCH PROCEEDS OR INSTRUMENTALITIES REGARDLESS OF WHERE THE OFFENSE TO WHICH THEY RELATE HAS BEEN COMMITTED OR WHETHER SUCH PROCEEDS OR INSTRUMENTALITIES ARE INTERMINGLED WITH PROPERTY OR ASSETS ACQUIRED FROM LEGITIMATE SOURCES.

--(II) FORFEIT SUCH PROCEEDS OR INSTRUMENTALITIES, WHEN A CONVICTION HAS BEEN OBTAINED IN ANY JURISDICTION FOR SUCH AN OFFENSE TO WHICH THEY RELATE OR WHEN, IN THE ABSENCE OF ANY PROSECUTION OR CONVICTION, THE COURT OR APPROPRIATE AUTHORITIY CONCLUDES THAT THE OWNER OF SUCH PROCEEDS OR INSTRUMENTALITIES KNEW OR HAD REASON TO KNOW THAT SUCH PROCEEDS WERE DERIVED DIRECTLY OR INDIRECTLY FROM THE COMMISSION OF SUCH AN OFFENSE OR SUCH INSTRUMENTALITIES WERE USED OR INTENDED TO BE USED FOR ILLICIT TRAFFIC.

COMMENTARY:

THE UNITED STATES BELIEVES THAT THE SCOPE OF ARTICLE 3 SHOULD BE BROADENED IN ORDER TO ENCOMPASS BOTH INSTRUMENTALITIES AND OFFENSES IN ADDITION TO TRAFFICKING. THE WORDING HAS BEEN CHANGED ACCORDINGLY.

THE UNITED STATES HAS INCLUDED THE CONCEPT CONTAINED IN PARAGRAPH 1 OF THE SECRETARIAT DRAFT IN NEW SUBPARAGRAPH (C). ALTHOUGH WORDED CONCISELY, IT IS BROAD ENOUGH TO ENSURE ITS CONTINUING APPLICABILITY IN THE FACE OF CHANGING DOMESTIC LAW IN THE AREA. ALSO, THE UNITED STATES BELIEVES THAT THERE SHOULD BE FORFEITURE IF THE OWNER OF THE PROCEEDS OR INSTRUMENTALITIES HAD REASON TO KNOW THAT THEY WERE DERIVED FROM OR USED OR INTENDED TO BE USED FOR ILLICIT TRAFFICKING. FREQUENTLY, THE CRITERIA FOR PROVING ACTUAL KNOWLEDGE CANNOT BE MET, BUT IT CAN BE SHOWN THAT THE OWNER HAD REASON TO KNOW ABOUT THE PROCEEDS OR INSTRUMENTALITIES.

ARTICLE 4

EXTRADITION

1. THIS ARTICLE SHALL APPLY TO THE OFFENSES ENUMERATED IN PARAGRAPH 1 OF ARTICLE 2 OF THIS CONVENTION.

2. EACH OF THE OFFENSES TO WHICH THIS ARTICLE APPLIES SHALL BE DEEMED TO BE INCLUDED AS AN EXTRADITABLE OFFENSE IN ANY EXTRADITION TREATY EXISTING BETWEEN PARTIES. PARTIES UNDERTAKE TO INCLUDE SUCH OFFENSES AS EXTRADITABLE OFFENSES IN EVERY EXTRADITION TREATY TO BE CONCLUDED BETWEEN THEM.

3. IF A PARTY WHICH MAKES EXTRADITION CONDITIONAL ON THE EXISTENCE OF A TREATY RECEIVES A REQUEST FOR EXTRADITION FROM ANOTHER PARTY WITH WHICH IT HAS NO EXTRADITION TREATY, IT MAY CONSIDER THIS CONVENTION AS THE LEGAL BASIS FOR EXTRADITION IN RESPECT OF ANY OFFENSE TO WHICH THIS ARTICLE APPLIES.

4. PARTIES WHICH DO NOT MAKE EXTRADITION CONDITIONAL ON THE EXISTENCE OF A TREATY SHALL RECOGNIZE OFFENSES TO WHICH THIS ARTICLE APPLIES AS EXTRADITABLE OFFENSES BETWEEN THEMSELVES, SUBJECT TO THE CONDITIONS PROVIDED FOR BY THE LAW OF THE REQUESTED PARTY.

5. A REQUEST FOR EXTRADITION WITH RESPECT TO ANY OF THE OFFENSES TO WHICH THIS ARTICLE APPLIES SHALL NOT BE

REFUSED:

(A) ON THE GROUND THAT THE PERSON SOUGHT IS A NATIONAL OF THE REQUESTED PARTY;

(B) ON THE GROUND THAT THE OFFENSE WAS COMMITTED OUTSIDE THE TERRITORY OF THE REQUESTING PARTY IF THE OFFENSE WAS INTENDED TO HAVE OR HAD EFFECTS WITHIN THE TERRITORY OF THE REQUESTING PARTY;

(C) ON THE GROUND THAT THE OFFENSE WAS POLITICAL IN CHARACTER OR THAT THE OFFENSE WAS POLITICALLY MOTIVATED.

6. THE PARTY IN THE TERRITORY OF WHICH THE ALLEGED OFFENDER IS FOUND SHALL, IF IT DOES NOT EXTRADITE HIM, BE OBLIGATED, UPON REQUEST OF THE REQUESTING PARTY, WHETHER OR NOT THE OFFENSE WAS COMMITTED IN ITS TERRITORY, TO SUBMIT THE CASE TO ITS COMPETENT AUTHORITIES FOR THE PURPOSE OF PROSECUTION. THOSE AUTHORITIES SHALL TAKE THEIR DECISION IN THE SAME MANNER AS IN THE CASE OF ANY ORDINARY OFFENSE OF A SERIOUS NATURE UNDER THE LAW OF THAT STATE.

7. (DELETE - NOW COVERED IN ARTICLE 2).

8. (DELETE.)

9. IN CASES OF CONCURRENT JURISDICTION OF REQUESTING AND REQUESTED PARTIES OVER AN OFFENSE TO WHICH THIS CONVENTION APPLIES, THE PARTIES INVOLVED SHALL CONSULT TO DETERMINE WHICH IS IN THE BEST POSITION TO ESTABLISH RELEVANT FACTS AND TO BRING THE OFFENDER TO JUSTICE.

9. (BIS) (NEW) (A) IF THE REQUESTED PARTY RECEIVES MORE THAN ONE REQUEST FOR THE EXTRADITION OF THE SAME PERSON EITHER FOR THE SAME OFFENSE OR FOR DIFFERENT OFFENSES ENUMERATED IN PARAGRAPH 1 OF ARTICLE 2 OF THIS CONVENTION, AND AT LEAST ONE SUCH REQUEST IS FROM ANOTHER PARTY TO THIS CONVENTION, THE EXECUTIVE AUTHORITY OF THE REQUESTED PARTY SHALL DETERMINE FOR WHICH STATE IT WILL EXECUTE THE REQUEST FOR SURRENDER. IN MAKING ITS DECISION, THE REQUESTED PARTY SHALL TAKE INTO ACCOUNT THE RESPECTIVE HARMS TO THE REQUESTING STATES OF THE OFFENSES OR OFFENSES TO WHICH THE REQUESTS RELATE AND THE POSSIBILITY OF FURTHER EXTRADITION BETWEEN THE REQUESTING STATES.

(B) IF THE REQUESTED PARTY RECEIVES MORE THAN ONE REQUEST FOR THE EXTRADITION OF THE SAME PERSON, NOT ALL OF WHICH

RELATE TO AN OFFENSE OR OFFENSES ENUMERATED IN PARAGRAPH 1 OF ARTICLE 2 OF THIS CONVENTION, THE EXECUTIVE AUTHORITY OF THE REQUESTED PARTY SHALL DETERMINE FOR WHICH STATE IT WILL EXECUTE THE REQUEST FOR SURRENDER. IN MAKING ITS DECISION, THE REQUESTED PARTY SHALL TAKE INTO ACCOUNT THAT THE OFFENSES ENUMERATED IN PARAGRAPH 1 OF ARTICLE 2 OF THIS CONVENTION ARE SERIOUS OFFENSES EFFECTING THE HEALTH AND WELFARE OF THE POPULATION OF THE PARTIES.

10. THE PARTIES SHALL CONSIDER ENTERING INTO BILATERAL AND REGIONAL AGREEMENTS TO CARRY OUT OR TO ENHANCE THE EFFECTIVENESS OF EXTRADITION AS A MEANS OF BRINGING TO JUSTICE PERSONS ACCUSED OF OFFENSES TO WHICH THIS CONVENTION APPLIES.

COMMENTARY:

PARAGRAPH 5(A) - THE UNITED STATES BELIEVES THAT TO PERMIT NARCOTICS TRAFFICKERS TO AVOID EXTRADITION ON THE BASIS OF NATIONALITY WOULD UNDERCUT THE SPIRIT AND INTENT OF THE CONVENTION. HENCE, THE UNITED STATES RECOMMENDS DELETION OF THE WORDS "UNLESS SUCH REFUSAL IS REQUIRED BY THE CONSTITUTION OF THE REQUESTED PARY."

PARAGRAPH 5(C) - THE UNITED STATES RECOMMENDS INSERTION OF THE WORDS "THAT THE OFFENSE" BEFORE THE WORDS "WAS POLITICALLY MOTIVATED" TO CLARIFY THAT EXTRADITION SHALL NOT BE REFUSED ON THE GROUND THAT THE FUGITIVE WAS POLITICALLY MOTIVATED TO COMMIT THE CRIME FOR WHICH EXTRADITION IS SOUGHT. THE UNITED STATES BELIEVES THIS CLARIFICATION WOULD MAKE CLEAR THE RIGHT TO REFUSE EXTRADITION WHEN THE EXECUTIVE AUTHORITY OF A PARTY HAS SOUND REASON TO BELIEVE THAT A REQUEST FOR EXTRADITION IS POLITICALLY MOTIVATED.

PARAGRAPH 6 - WHEN EXTRADITION IS DENIED, THE UNITED STATES BELIEVES THAT THERE ARE INSTANCES IN WHICH THE REQUESTED PARTY SHOULD PROSECUTE THE ALLEGED OFFENDER. THIS PROVISION WOULD REQUIRE THE REQUESTED PARTY'S COMPETENT AUTHORITIES TO CONSIDER PROSECUTION WHEN ASKED TO DO SO BY A PARTY WHOSE EXTRADITION REQUEST HAS BEEN DENIED, WHILE AT THE SAME TIME ACKNOWLEDGING THAT SAID AUTHORITIES MAY DETERMINE THAT PROSECUTION IS NOT POSSIBLE. FURTHERMORE, THE UNITED STATES BELIEVES THAT THIS PROVISION RECOGNIZES THE INHERENT RIGHT A REQUESTED PARTY HAS AND RETAINS TO PROSECUTE AN OFFENDER WHO HAS VIOLATED ITS LAWS, WHETHER ASKED TO DO SO OR NOT BY A PARTY WHOSE EXTRADITION REQUEST HAS BEEN DENIED.

PARAGRAPH 8 - THE UNITED STATES FAVORS DELETION OF THIS PROVISION, WHICH COULD RAISE THE THRESHOLD FOR EXTRADITION IN SOME INSTANCES.

PARAGRAPH 9 - THE UNITED STATES BELIEVES THAT, IN CASES OF CONCURRENT JURISDICTION, THE REQUESTED PARTY AND REQUESTING PARTY SHOULD CONSULT TO DETERMINE WHICH IS IN THE BEST POSITION TO BRING THE OFFENDER TO JUSTICE.

PARAGRAPH 9 BIS (NEW) - THIS NEW PROVISION WOULD GOVERN MULTIPLE REQUESTS FOR EXTRADITION. THE UNITED STATES BELIEVES THAT THE GRAVITY OF THE OFFENSES ENUMERATED IN PARAGRAPH 1 OF ARTICLE 2 SHOULD BE AMONG THE FACTORS CONSIDERED WHEN A PARTY RECEIVES MORE THAN ONE EXTRADITION REQUEST FOR THE SAME PERSON AND MUST DECIDE FOR WHICH STATE IT WILL EXECUTE THE REQUEST.

ARTICLE 5

MUTUAL LEGAL ASSISTANCE

1. THE PARTIES SHALL PROVIDE ONE ANOTHER, UPON REQUEST AND IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, MUTUAL LEGAL ASSISTANCE IN ALL INVESTIGATIONS, PROSECUTIONS, AND OTHER JUDICIAL AND ADMINISTRATIVE PROCEEDINGS RELATING OF THE OFFENSES ENUMERATED IN PARAGRAPH 1 OF ARTICLE 2 OF THIS CONVENTION AND IN ANY OTHER PROCEEDINGS RELATING TO THE IDENTIFICATION TRACING, FREEZING, SEIZURE, OR FORFEITURE OF THE PROCEEDS OR INSTRUMENTALITIES OF SUCH OFFENSES.

2. THE PARTIES SHALL TAKE SUCH MEASURES AS ARE NECESSARY WITHIN THEIR DOMESTIC LEGAL SYSTEMS TO ENSURE THAT THE LEGAL ASSISTANCE ENVISAGED BY THIS ARTICLE MAY BE RENDERED UPON THE REQUEST OF OTHER PARTIES.

3. MUTUAL LEGAL ASSISTANCE SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) TAKING TESTIMONY OR STATEMENTS;
(B) PROVIDING DOCUMENTS, RECORDS, AND ARTICLES OF EVIDENCE, INCLUDING BANK, FINANCIAL, CORPORATE, AND BUSINESS RECORDS;
(C) SERVING DOCUMENTS;
(D) LOCATING AND IDENTIFYING WITNESSES, SUSPECTS OR OTHER PERSONS;
(E) TRANSFERRING PERSONS IN CUSTODY FOR THE PURPOSE OF GIVING TESTIMONY;

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(F) EXECUTING REQUESTS FOR SEARCHES AND SEIZURES;
(G) FREEZING AND SEIZING PROCEEDS AND INSTRUMENTALITIES;
(H) EXAMINING OBJECTS AND SITES; AND
(I) EXCHANGING INFORMATION AND OBJECTS

4. THE PARTIES SHALL GIVE FAVORABLE CONSIDERATION TO THE POSSIBILITY OF TRANSFERRING TO ONE ANOTHER PROCEEDINGS FOR CRIMINAL PROSECUTION IN CASES WHERE SUCH TRANSFER MAY HELP TO ENSURE THAT ALL PERSONS WHO COMMIT OFFENSES PUNISHABLE UNDER THIS CONVENTION ARE BROUGHT TO JUSTICE.

5. ASSISTANCE MAY BE GRANTED WITHOUT REGARD TO WHETHER THE ACTS UNDER INVESTIGATION OR PROSECUTION ARE OFFENSES UNDER THE LAWS OF THE REQUESTED PARTY OR WHETHER THE REQUESTED PARTY WOULD HAVE JURISDICTION IN SIMILAR CIRCUMSTANCES.

6. TO FACILITATE OR EXECUTE REQUESTS FOR LEGAL ASSISTANCE, EACH PARTY SHALL ESTABLISH A CENTRAL AUTHORITY, WHICH SHALL BE EITHER ITS MINISTRY OF JUTICE OR A NATIONAL OFFICE THAT HAS THE POWER TO PRESENT REQUESTS TO ITS CITIZENS, ISSUE SUBPOENAS, EXECUTE SEARCH WARRANTS, AND TO PROSECUTE AND INVESTIGATE ILLICIT TRAFFIC. THE CENTRAL AUTHORITY DESIGNATED BY EACH PARTY FOR THIS PURPOSE SHALL BE NOTIFIED TO ALL OTHER PARTIES THROUGH THE SECRETARY-GENERAL.

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7. REQUESTS FOR LEGAL ASSISTANCE UNDER THIS ARTICLE SHALL BE MADE IN WRITING BY THE CENTRAL AUTHORITY OF THE REQUESTING PARTY TO THE CENTRAL AUTHORITY OF THE REQUESTED PARTY. IN EMERGENCY SITUATIONS, A REQUEST MAY BE MADE ORALLY, TO BE FOLLOWED AS SOON THEREAFTER AS POSSIBLE BY A WRITTEN REQUEST. A CENTRAL AUTHORITY MAY DELEGATE EXECUTION OF REQUESTS.

8. REQUESTS FOR LEGAL ASSISTANCE SHALL CONTAIN SUCH INFORMATION AS THE REQUESTED PARTY MAY REQUIRE, INCLUDING:

(A) THE NAME OF THE AUTHORITY CONDUCTING THE INVESTIGATION, PROSECUTION, OR PROCEEDING TO WHICH THE REQUEST RELATES;

(B) THE SUBJECT MATTER AND NATURE OF THE INVESTIGATION, PROSECUTION, OR PROCEEDING, INCLUDING THE OFFENSE OR OFFENSES TO WHICH THE INVESTIGATION, PROSECUTION, OR PROCEEDING RELATES;

(C) A DESCRIPTION OF THE EVIDENCE, INFORMATION, OR OTHER ACT OF ASSISTANCE SOUGHT;

(D) THE PURPOSE FOR WHICH THE EVIDENCE, INFORMATION, OR OTHER ACT OF ASSISTANCE IS SOUGHT;

(E) AN OUTLINE OF ANY PROCEDURAL REQUIREMENTS ESSENTIAL TO THE REQUESTING PARTY; AND

(F) REQUIREMENTS FOR CONFIDENTIALITY, WHERE NECESSARY.

9. TO THE EXTENT NOT PRECLUDED BY THE LAW OF THE REQUESTED PARTY, A REQUEST SHALL BE EXECUTED IN ACCORDANCE WITH PROCEDURAL REQUIREMENTS SPECIFIED IN THE REQUEST.

10. THE REQUESTING PARTY SHALL NOT DISCLOSE OR USE INFORMATION OR EVIDENCE FURNISHED BY THE REQUESTED PARTY FOR PURPOSES OTHER THAN THOSE STATED IN THE REQUEST WITHOUT THE PRIOR CONSENT OF THE REQUESTED PARTY. THE REQUESTING PARTY MAY REQUIRE THAT THE REQUESTED PARTY KEEP CONFIDENTIAL THE SUBSTANCE OF THE REQUEST EXCEPT TO THE EXTENT NECESSARY TO EXECUTE THE REQUEST. IF THE REQUEST CANNOT BE EXECUTED WITHOUT BREACHING THE REQUIRED CONFIDENTIALITY, THE REQUESTED PARTY SHALL SO INFORM THE REQUESTING PARTY, WHICH SHALL THEN DETERMINE WHETHER THE REQUEST SHOULD NEVERTHELESS BE EXECUTED.

11. REQUESTS FOR LEGAL ASSISTANCE MAY BE DENIED IF:

(A) THE REQUEST IS NOT MADE IN CONFORMITY WITH THE PROVISIONS OF THIS ARTICLE; OR

(B) THE REQUESTED PARTY CONSIDERS THAT EXECUTION OF THE REQUEST IS LIKELY TO PREJUDICE ITS NATIONAL SECURITY OR OTHER ESSENTIAL INTERESTS.

12. IF THE EXECUTION OF A REQUEST FOR LEGAL ASSISTANCE WOULD INTERFERE WITH AN ONGOING INVESTIGATION OR PROCEEDING IN THE TERRITORY OF THE REQUESTED PARTY, THE CENTRAL AUTHORITY OF THAT PARTY MAY POSTPONE EXECUTION OR MAKE EXECUTION SUBJECT TO CONDITIONS DETERMINED NECESSARY AFTER CONSULTATIONS WITH THE REQUESTING PARTY. IF THE REQUESTING PARTY ACCEPTS THE ASSISTANCE SUBJECT TO GIVEN CONDITIONS, IT SHALL COMPLY WITH THE CONDITIONS IMPOSED.

13. THE PROVISIONS OF THIS ARTICLE SHALL NOT PREVENT A PARTY FROM GRANTING OR SEEKING ASSISTANCE THROUGH OTHER ARTICLES OF THIS CONVENTION, OR THROUGH THE PROVISIONS OF OTHER INTERNATIONAL AGREEMENTS TO WHICH IT MAY BE PARTY, OR THROUGH THE PROVISIONS OF ITS NATIONAL LAWS. THE

PARTIES MAY ALSO PROVIDE ASSISTANCE PURSUANT TO ANY BILATERAL ARRANGEMENT, AGREEMENT, OR PRACTICE.

14. THIS ARTICLE IS INTENDED SOLELY FOR MUTUAL LEGAL ASSISTANCE BETWEEN THE PARTIES AND SHALL NOT GIVE RISE TO A RIGHT ON THE PART OF ANY PRIVATE PERSON TO OBTAIN, SUPPRESS, OR EXCLUDE ANY EVIDENCE, OR TO IMPEDE THE EXECUTION OF A REQUEST.

COMMENTARY:

PARAGRAPH 3(E) - THE SUCCESS OF A PROSECUTION OR OTHER JUDICIAL PROCEEDING INVOLVING ILLICIT TRAFFICKING OFTEN DEPENDS UPON THE TESTIMONY OF A PERSON INCARCERATED IN THE TERRITORY OF A PARTY OTHER THAN THAT OF THE PROSECUTING PARTY. ACCORDINGLY, THE UNITED STATES RECOMMENDS INCLUSION OF THIS SUBPARAGRAPH.

PARAGRAPH 3(G) - ONE OF THE PRIMARY MEANS OF FIGHTING DRUG TRAFFICKING IS TO DEPRIVE THE TRAFFICKERS OF THE PROCEEDS DERIVED FROM OR THE INSTRUMENTALITIES USED IN OR ACQUIRED FROM ILLICIT TRAFFICKING. FREEZING AND SEIZING SUCH PROCEEDS AND INSTRUMENTALITIES IS OFTEN THE FIRST STEP IN THE PROCESS LEADING TO THEIR FORFEITURE, AND THE UNITED STATES CONSIDERS THIS TYPE OF MUTUAL LEGAL ASSISTANCE TO BE FUNDAMENTAL TO THE INTERNATIONAL COOPERATION ENVISAGED BY THIS ARTICLE. THEREFORE, THE UNITED STATES RECOMMENDS THE INCLUSION OF THIS LANGUAGE IN HARMONY WITH THE RECOMMENDATIONS MADE IN PARAGRAPHS 69(A) THROUGH (H) OF THE REPORT OF THE SECOND EXPERT GROUP MEETING ON THE FORFEITURE OF THE PROCEEDS OF DRUG CRIMES (MNAR/1984/13, AT PAGES 16 THROUGH 18), AND IN CONFORMITY WITH THE INTENT EXPRESSED IN ARTICLE 3 OF THIS CONVENTION.

PARAGRAPH 4(A) - THE UNITED STATES DOES NOT OBJECT TO INCLUSION OF THIS OPTIONAL PROVISION, ALTHOUGH IT CANNOT TRANSFER LEGAL PROCEEDINGS TO ANOTHER COUNTRY.

PARAGRAPH 4(B) - (DELETED; NOW ADDRESSED IN PARAGRAPH 3 (E)).

PARAGRAPH 5 - NOW PARAGRAPH 6.

PARAGRAPH 5 (NEW) - THE UNITED STATES RECOMMENDS THE INCLUSION OF THIS PROVISION TO UNDERSCORE THE CONVENTION'S INTENTION THAT THE PARTIES PROVIDE TO ONE ANOTHER THE WIDEST POSSIBLE SCOPE OF ASSISTANCE IN FIGHTING THE INTERNATIONAL DRUG PROBLEM.

PARAGRAPH 6 - THE UNITED STATES BELIEVES THAT IT IS IMPORTANT TO HAVE A READILY IDENTIFIABLE CENTRAL AUTHORITY SO THAT EACH PARTY KNOWS PRECISELY WHO IS MAKING A REQUEST.

PARAGRAPH 7 - COMBINES THE SUBSTANCE OF PARAGRAPHS 6 AND 7 OF THE SECRETARIAT'S DRAFT.

PARAGRAPH 10 - THE UNITED STATES BELIEVES IT IMPORTANT THAT A REQUESTING PARTY BE GIVEN THE OPPORTUNITY TO WITHDRAW ITS REQUEST FOR LEGAL ASSISTANCE IF THE REQUESTED PARTY IS UNABLE TO MAINTAIN THE REQUIRED CONFIDENTIALITY.

PARAGRAPH 14 - THIS IS A NEW PROVISION, WHICH MAKES CLEAR THAT THIS CONVENTION DOES NOT CREATE RIGHTS FOR PRIVATE PARTIES, PARTICULARLY DRUG TRAFFICKERS AND THEIR REPRESENTATIVES, AS A RESULT OF THE OPERATION OF THIS ARTICLE.

ARTICLE 7

CONTROLLED DELIVERY

1. HAVING DUE REGARD TO THEIR CONSTITUTIONAL, LEGAL AND ADMINISTRATIVE SYSTEMS, THE PARTIES SHALL TAKE THE NECESSARY MEASURES TO ALLOW FOR THE APPROPRIATE USE OF CONTROLLED DELIVERY IN ORDER TO IDENTIFY AND BRING TO JUSTICE THE INDIVIDUALS, CORPORATIONS OR OTHER LEGAL ENTITIES INVOLVED IN THE SHIPMENT, TRANSPORTATION DELIVERY, CONCEALMENT OR RECEIPT OF ILLICIT CONSIGNMENTS OF CONTROLLED SUBSTANCES.

2. WITH A VIEW OF ENSURING THAT THE USE OF CONTROLLED DELIVERY MAY BE EFFECTIVELY COORDINATED AT THE NATIONAL AND INTERNATIONAL LEVELS, THE PARTIES SHALL CONSIDER DESIGNATING AN APPROPRIATE AUTHORITY FOR SUCH COORDINATION. THE AUTHORITY DESIGNATED BY EACH PARTY FOR THIS PURPOSE SHALL BE NOTIFIED THROUGH THE SECRETARY-GENERAL TO ALL OTHER PARTIES.

3. DECISIONS TO USE CONTROLLED DELIVERY SHALL BE MADE ON A CASE-BY-CASE BASIS. THE PROCEDURES REGARDING NOTIFICATION, SURVEILLANCE AND INTERDICTION RELATIVE TO A CONTROLLED DELIVERY SHALL BE ESTABLISHED AND AGREED TO BY THE REQUESTING PARTY AND THE PARTY(S) OF THE TERRITORY TO BE TRANSITED BY THE ILLICIT NARCOTICS PRIOR TO INITIATION OF THE CONTROLLED DELIVERY.

4. IN ORDER TO ENSURE THAT APPROPRIATE SECURITY IS MAINTAINED THROUGHOUT THE CONTROLLED DELIVERY, THE PARTIES SHALL PROVIDE:

(A) THAT THE CONSIGNMENT BE UNDER CONTINUOUS SURVEILLANCE;

(B) THAT THE PARTY IN WHOSE TERRITORY ANY IMMEDIATE RISK OF LOSS ARISES INTERVENES AS NECESSARY;

(C) THAT ANY ACTION BY LAW ENFORCEMENT AGENCIES OF THE REQUESTING PARTY BE SUBJECT TO THE PRIOR AUTHORIZATION OF THE PARTY HAVING JURISDICTION OVER THE TERRITORY IN WHICH THE CONTROLLED DELIVERY TAKES PLACE;

(D) THAT ALL OR PART OF THE CONTROLLED SUBSTANCES IN THE ILLICIT CONSIGNMENT BE REPLACED WHENEVER POSSIBLE WITH INNOCUOUS SUBSTANCES.

COMMENTARY:

PARAGRAPH 3 - CLARIFYING PROCEDURAL LANGUAGE IS ADDED.

PARAGRAPGH 5 - THE UNITED STATES PROPOSES DELETION OF PARAGRAPH 5. THE INFORMATION IN THE FIRST SENTENCE IS IMPLICIT IN THE CONCEPT OF CONTROLLED DELIVERY WHICH IS DISCUSSED IN GREAT DETAIL IN DOCUMENT E/CN.7/1983/13. ARTICLES 5 AND 6 ADEQUATELY COVER THE CONCEPT OF THE SECOND SENTENCE CONCERNING PROVIDING EVIDENCE. WE BELIEVE THAT THE CONCEPTS IN PARAGRAPH 5 ARE VALID BUT NEED TO BE ADDRESSED ON A MUCH BROADER SCALE IN THE COMMENTARY TO AVOID CONFUSION, PREFERABLY BY DRAWING FROM THE PREVIOUS REFERENCED DOCUMENT.

ARTICLE 8

MEASURES TO MONITOR OR CONTROL SPECIFIC CHEMICALS USED IN THE ILLICIT PROCESSING OR MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

COMMENTARY:

THE UNITED STATES IS PROPOSING A RECOMMENDED LIST OF "SPECIFIC CHEMICALS" FOR INCLUSION IN LIST A AND LIST B. THESE ARE CHEMICALS COMMONLY USED IN ILLICIT MANUFACTURE AND PROCESSING FOR SUCH DRUGS AS METHAQUALONE, LSD, METHAMPHETAMINE, PHENCYCLIDINE, HEROIN AND COCAINE. THE UNITED STATES HAS NO PROPOSED AMENDMENTS TO THE TEXT OF THE ARTICLE.

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SPECIFIC CHEMICALS

LIST A:

ANTHRANILIC ACID
ERGOTAMINE
ERGONOVINE
PHENYLACETIC ACID
PHENYL-2-PROPANONE
EPHEDRINE
PSUEDOEPHEDRINE
PIPERIDINE

LIST B:

ACETIC ANHYDRIDE
ACETONE
ETHYL ETHER

ARTICLE 10

MEASURES TO ERADICATE NARCOTIC PLANTS CULTIVATED ILLICITLY

1. EACH PARTY SHALL TAKE APPROPRIATE TECHNICAL MEASURES TO ERADICATE OPIUM POPPY, COCA BUSH AND CANNABIS PLANTATIONS WHICH MAY BE CULTIVATED ILLICITLY IN ITS TERRITORY. WITH REGARD TO BIOLOGICAL AND ECOLOGICAL CONSIDERATIONS, SCIENTIFICALLY ACCEPTED AGRONOMETRIC TECHNIQUES WILL BE APPLIED TO ERADICATION EFFORTS UNDERTAKEN BY THE PARTIES.

2. THE PARTIES SHALL COOPERATE TO INCREASE THE EFFECTIVENESS OF ERADICATION EFFORTS, INCLUDING THE EXCHANGE OF SCIENTIFIC, AGRONOMETRIC AND TECHNICAL INFORMATION, AND THE SPONSORSHIP OF RESEARCH EFFORTS PERTINENT TO THE ELIMINATION OF NARCOTIC CROPS, AND THE DEVELOPMENT OF COMMERCIALLY VIABLE ALTERNATIVES TO ILLICIT CULTIVATION.

3. PARTIES WITH COMMON FRONTIERS SHALL SEEK TO COOPERATE IN ERADICATION PROGRAMS IN AREAS CONTIGUOUS TO THEIR COMMON BOUNDARIES IN WHICH ILLICIT NARCOTIC CROPS GROW.

COMMENTARY:

THE UNITED STATES FAVORS THE ABOVE REVISIONS TO THE SECRETARIAT DRAFT. MANY ILLICIT NARCOTIC PLANTS ARE CULTIVATED IN RELATIVELY REMOTE RURAL AREAS, WHICH

RENDERS MANUAL ERADICATION OF LARGE PLANTINGS DIFFICULT TO ACCOMPLISH. IN ADDITION, THE TECHNOLOGY OF THE USE OF HERBICIDES IN THE ERADICATION OF ILLICIT NARCOTIC CROPS WARRANTS MODIFICATION OF THE SECRETARIAT DRAFT. ALL OF THE HERBICIDES CURRENTLY UTILIZED ARE WIDELY EMPOLOYED IN AGRICULTURAL PRACTICE. WHEN USED ACCORDING TO MANUFACTURER'S INSTRUCTIONS, WHICH INCLUDE APPROPRIATE HEALTH, SAFETY AND ENVIRONMENTAL SAFEGUARDS, THESE HERBICIDES HAVE PROVEN TO BE SAFE AND ECOLOGICIALLY BENIGN.

ARTICLE 11

ILLICIT TRAFFIC BY CARRIERS

1. THE PARTIES SHALL TAKE APPROPRIATE MEASURES TO ENSURE ADEQUATE SECURITY AT INTERNATIONAL PORTS. PARTIES SHALL ALSO TAKE APPROPRIATE MEASURES TO ENSURE THAT ALL MEANS OF TRANSPORT ARE NOT USED IN ILLICIT TRAFFIC. SUCH MEASURES SHALL INCLUDE THOROUGH SEARCHES UPON ARRIVAL OR BEFORE DEPARTURE OF ALL MEANS OF TRANSPORT SUSPECTED OF CONTAINING EVIDENCE OF ILLICIT TRAFFIC.

2. IN ORDER TO ENSURE THAT ALL MEANS OF TRANSPORT ARE NOT USED IN ILLICIT TRAFFIC, PARTIES SHALL:

(A) REQUIRE THAT ALL MEANS OF TRANSPORT ENTERING ITS TERRITORY FROM A FOREIGN PLACE SHALL DO SO ONLY AT POINTS OF ENTRY DESIGNATED OR TO BE DESIGNATED BY ITS APPROPRIATE AUTHORITY.

(B) INSTITUTE A SYSTEM OF PENALTIES TO ENSURE COMPLIANCE WITH REPORTING AND INSPECTION REQUIREMENTS;

(C) CONSIDER THE USE OF ELECTRONIC SIGNALLING AND TRACKING DEVISES TO MONITOR COMPLIANCE;

(D) ASSIST ONE ANOTHER TO DETERMINE THE OWNERSHIP AND MOVEMENT OF MEANS OF TRANSPORT ENGAGED IN ILLICIT TRAFFIC.

3. THE PARTIES SHALL REQUIRE COMMERCIAL CARRIERS TO TAKE REASONABLE PRECAUTIONS TO PREVENT THE USE OF THEIR MEANS OF TRANSPORT FOR ILLICIT TRAFFIC AND SHALL IMPOSE ADEQUATE PENALTIES FOR FAILURE TO DO SO. PENALTIES SHALL INCLUDE THE POSSIBLE FORFEITURE OF THE MEANS OF TRANSPORT IF IT IS ESTABLISHED THAT THE COMMERCIAL CARRIER FAILED TO TAKE REASONABLE PRECAUTIONS, OR KNEW OR HAD REASON TO KNOW THAT ITS MEANS OF TRANSPORT WAS USED FOR ILLICIT TRAFFIC.

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4. THE PARTIES SHALL SEEK TO ENSURE THAT COMMERCIAL CARRIERS:

(A) TRAIN THEIR PERSONNEL TO IDENTIFY SUSPICIOUS SHIPMENTS OR PERSONS;

(B) LIMIT ACCESS TO MEANS OF TRANSPORT AND CARGO AT INTERNATIONAL PORTS;

(C) PROMOTE EMPLOYEE INTEGRITY;

(D) PROVIDE CARGO MANIFESTS IN ADVANCE OF ARRIVAL IN PORT, WHEN POSSIBLE;

(E) SCHEDULE, WHEN POSSIBLE, THE ARRIVAL OF MEANS OF TRANSPORT SO AS TO FACILITATE EFFECTIVE CUSTOMS PROCESSING;

(F) USE TAMPER-PROOF INDIVIDUALLY VERIFIABLE SEALS ON CONTAINERS.

5. (DELETE.)

5. (BIS) (NEW) THE PARTIES AGREE THAT IT SHALL NOT BE CONSIDERED UNREASONABLE TO DELAY THE DEPARTURE OF A COMMERCIAL AIRCRAFT IN ORDER TO UNDERTAKE A THOROUGH SEARCH FOR EVIDENCE OF ILLICIT TRAFFIC. SEARCHES SHALL BE CONDUCTED WITH THE ASSISTANCE OF QUALIFIED MAINTENANCE PERSONNEL WHEN NECESSARY IN ORDER TO MAINTAIN AIR WORTHINESS.

COMMENTARY:

PARAGRAPHS 1 AND 2 - THE UNITED STATES BELIEVES THAT THIS ARTICLE SHOULD ENCOMPASS PRIVATE AS WELL AS COMMERCIAL CARRIERS. THE SECRETARIAT DRAFT APPLIES TO COMMERCIAL CARRIERS ONLY. YET SIGNIFICANT AMOUNTS OF ILLICIT NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES HAVE BEEN SEIzED IN CONNECTION WITH THE INTERNATIONAL MOVEMENT OF PRIVATELY OWNED AND OPERATED MEANS OF TRANSPORT. THE UNITED STATES THEREFORE PROPOSES TO STRENGTHEN THE CONVENTION BY CHANGING THE TITLE OF THE ARTICLE AND BY MAKING OTHER CHANGES CHANGES CONSISTENT WITH THE INCLUSION OF PRIVATE AS WELL AS COMMERCIAL CARRIERS. ALSO, DEFINITIONS OF "CARRIER" AND "MEANS OF TRANSPORT" HAVE BEEN ADDED TO ARTICLE 1.

PARAGRAPH 2(A) - THE UNITED STATES PROPOSES USE OF THE

TERM "POINTS OF ENTRY," WHICH ENCOMPASSES BOTH PORTS OF ENTRY AS WELL AS ANY OTHER SPECIFIC REPORTING OR LANDING SITES DESIGNATED BY A STATE.

PARAGRAPH 5 - THE UNITED STATES CONSIDERS THIS PROVISION, GOVERNING THE RELATIONSHIP OF CARRIERS TO GOVERNMENTAL AGENCIES, TO BE UNNECESSARY.

ARTICLE 12

ILLICIT TRAFFIC BY SEA

1. THE PARTIES SHALL CO-OPERATE TO THE FULLEST EXTENT POSSIBLE TO SUPPRESS THE ILLICIT TRAFFIC IN CONTROLLED SUBSTANCES BY SEA.

2. (A) A PARTY WHICH HAS REASONABLE GROUNDS TO SUSPECT THAT A VESSEL REGISTERED UNDER ITS LAWS IS BEING USED FOR THE ILLICIT TRAFFIC IN CONTROLLED SUBSTANCES MAY REQUEST THE ASSISTANCE OF OTHER PARTIES IN SUPPRESSING ITS USE FOR THAT PURPOSE. PARTIES SO REQUESTED SHALL RENDER SUCH ASSISTANCE, WITHIN THE MEANS AVAILABLE TO THEM.

(B) A PARTY WHICH HAS REASONABLE GROUNDS TO SUSPECT THAT A VESSEL REGISTERED UNDER THE LAWS OF ANOTHER STATE IS BEING USED FOR THE ILLICIT TRAFFIC IN CONTROLLED SUBSTANCES SHALL INFORM THE FLAG STATE AND, IF NECESSARY TO CARRY OUT THE PROVISIONS OF THIS CONVENTION, MAY REQUEST THE ASSISTANCE OF OTHER PARTIES IN SUPPRESSING ITS USE FOR THAT PURPOSE. PARTIES SO REQUESTED SHALL RENDER SUCH ASSISTANCE, WITHIN THE MEANS AVAILABLE TO THEM.

3. (A) A PARTY WHICH HAS REASONABLE GROUNDS TO BELIEVE THAT A VESSEL REGISTERED UNDER THE LAWS OF ANOTHER PARTY IS ENGAGED IN ILLICIT TRAFFIC AND IS OUTSIDE THE TERRITORY AND TERRITORIAL SEA OF ANY STATE MAY BOARD, SEARCH, AND SEIzE SUCH VESSEL IF AGREED OR OTHERWISE ARRANGED BETWEEN THAT PARTY AND THE PARTY OF REGISTRY.

(B) A PARTY WHICH HAS REASONABLE GROUNDS TO BELIVE THAT A VESSEL IS ENGAGED IN ILLICIT TRAFFIC AND THE VESSEL IS WITHIN ITS INTERNAL WATERS OR TERRITORIAL SEA IS ENCOURAGED TO REQUEST THE ASSISTANCE OF ANY OTHER PARTY TO BOARD, SEARCH, AND SEIzE SUCH VESSEL.

4. A PARTY SHALL RESPOND IN AN EXPEDITIOUS MANNER TO REQUESTS FROM ANOTHER PARTY TO DETERMINE, FOR THE PURPOSES OF PARAGRAPH 3(A) OF THIS ARTICLE, WHETHER A

VESSEL IS REGISTERED UNDER ITS LAWS, AND TO REQUESTS FOR PERMISSION MADE PURSUANT TO THE PROVISIONS IN THAT PARAGRAPH. EACH PARTY SHALL DESIGNATE AN AUTHORITY TO RECEIVE AND ACT UPON SUCH REQUESTS. THE AUTHORITY DESIGNATED BY EACH PARTY FOR THIS PURPOSE SHALL BE NOTIFIED THROUGH THE SECRETARY-GENERAL TO ALL OTHER PARTIES.

5. WHERE EVIDENCE OF ILLICIT TRAFFIC IS FOUND, THE PARTY HAVING CUSTODY OF THE VESSEL SHALL TAKE APPROPRIATE ACTION WITH RESPECT TO THE VESSEL AND PERSONS ON BOARD, IN ACCORDANCE WITH:

(A) EXISTING BILATERAL TREATIES, WHERE APPLICABLE, OR ANY AGREEMENT OR ARRANGEMENT OTHERWISE REACHED WITH THE PARTY OF REGISTRY OF THE VESSEL SEIzED PURSUANT TO PARAGRAPH 3(A) OF THIS ARTICLE.

(B) ITS OWN JUDICIAL REQUIREMENTS IF THE VESSEL IS:

--(I) REGISTERED UNDER ITS LAWS, OR

--(II) IS A VESSEL WITHOUT NATIONALITY OR A VESSEL ASSIMILATED TO A VESSEL WITHOUT NATIONALITY, OR, UPON INQUIRY, A VESSEL WHICH FAILED TO MAKE A CLAIM OF REGISTRY.

6. THE RIGHT TO CHALLENGE THE NATURE OR EFFECT OF THE AGREEMENT OR ARRANGEMENT REFERRED TO IN PARAGRAPH 5(A) OF THIS ARTICLE SHALL REST EXCLUSIVELY WITH PARTY OF REGISTRY.

7. THE PARTIES SHALL CONSIDER ENTERING INTO BILATERAL AND REGIONAL AGREEMENTS TO CARRY OUT, OR TO ENHANCE THE EFFECTIVENESS OF, THE PROVISIONS OF THIS ARTICLE.

COMMENTARY:

PARAGRAPH 2 (BIS) - THIS PARAGRAPH IS A COROLLARY TO PARAGRAPH 2. THAT PARAGRAPH ENCOURAGES PARTIES TO CALL UPON OTHER PARTIES TO ASSIST IN THE SUPPRESSION OF DRUG TRAFFICKING BY ITS FLAG VESSELS. PARAGRAPH 2 (BIS) REQUIRES PARTIES HAVING KNOWLEDGE OF TRAFFICKING BY VESSELS REGISTERED BY ANOTHER NATION TO INFORM THE FLAG STATE OF ITS SUSPICION. THE PARAGRAPH FURTHER ENCOURAGES PARTIES TO SEEK THE ASSISTANCE OF OTHER PARTIES FOR THE SUPPRESSION OF TRAFFICKING BY VESSELS REGARDLESS OF FLAG.

PARAGRAPH 3 - THE SECRETARIAT DRAFT PROVIDED FOR

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AUTHORIZING A PARTY TO BOARD, SEARCH, AND SEIZE A VESSEL ENGAGED IN TRAFFICKING WHILE ON THE HIGH SEAS IN THREE INSTANCES: (A) THAT THE VESSEL WAS REGISTERED UNDER ITS LAWS; (B) THAT THE PARTY SEEKS AND RECEIVES PERMISSION FROM A PARTY OF REGISTRY; (C) THAT A VESSEL IS NOT DISPLAYING A FLAG OR MARKING OF REGISTRY. IT IS WELL RECOGNIZED IN INTERNATIONAL LAW THAT A STATE MAY EXERCISE JURISDICTION OVER ITS OWN FLAG VESSELS WHEREVER LOCATED. STATELESS VESSELS ARE NOT AFFORDED THE PROTECTION OF ANY NATION, SO NO SPECIFIC MULTILATERAL AGREEMENT FOR THE EXERCISE OF ENFORCEMENT JURISDICTION IS NECESSARY. HAVING ELIMINATED TWO OF THE THREE INSTANCES, THE PROPOSED PARAGRAPH FOCUSES ON THE LIMITS OF ENFORCEMENT JURISDICTION OVER VESSELS OF ANOTHER PARTY'S FLAG.

THE PROPOSED PARAGRAPH IS INTENDED TO ESTABLISH INTERNATIONALLY RECOGNIZED PROCEDURE FOR BOARDING, SEARCHING, AND SEIZING A VESSEL ON THE BASIS OF SUSPICION OF TRAFFICKING. THE UNITED STATES PROPOSES USING DIFFERENT GEOGRAPHIC LIMITS FOR THE COVERAGE OF THIS PROVISION. THE SECRETARIAT DRAFT CITED THE HIGH SEAS DEFINITION OF PART VII OF THE UN CONVENTION ON THE LAW OF THE SEA (UNLOS). REFERENCE TO THAT PROVISION IS OF CONCERN BECAUSE THE HIGH SEAS ARE DEFINED AS BEING OUTSIDE THE TERRITORIAL SEAS, CONTIGUOUS ZONES, AND EXCLUSIVE ECONOMIC ZONE OF NATIONS. THE U.S. PROPOSAL USES THE MORE TRADITIONAL CONCEPT OF TERRITORIAL SEAS AS THE LIMITING BOUNDARY FOR EXERCISE OF ENFORCEMENT AUTHORITY WITHOUT CONSENT OF THE COASTAL STATE. THE PARAGRAPH INTENDS THAT EVEN THOUGH THE PARTY MAY HAVE EXTRATERRITORIAL PRESCRIPTIVE JURISDICTION, THE EXTRATERRITORIAL ENFORCEMENT JURISDICTION WILL BE CONDITIONED UPON PRIOR CONSENT OF THE STATE OF REGISTRY, UNLESS OTHERWISE PERMITTED BY INTERNATIONAL LAW.

PARAGRAPH 3 (BIS) - THIS NEW PROVISION WOULD ENCOURAGE THOSE PARTIES WITH INSUFFICIENT RESOURCES TO ADEQUATELY PROTECT THEIR TERRITORY FROM USE BY TRAFFICKERS TO REQUEST ASSISTANCE FROM OTHER PARTIES WITH AVAILABLE RESOURCES BY AUTHORIZING BOARDING, SEARCH, AND SEIZING VESSELS SUSPECTED OF TRAFFICKING EVEN THOUGH LOCATED IN THEIR TERRITORIAL SEA OR INLAND WATERS.

PARAGRAPH 5 IS SLIGHTLY REDRAFTED TO CLARIFY ITS INTENT, AND ADDS A SPECIFIC REFERENCE TO STATELESS VESSELS NOT FOUND IN THE SECRETARIAT DRAFT. END TEXT.YY

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A P P E N D I X III

PROPOSED DRAFT OF ARTICLE I, DRAFT PREAMBLE, DRAFT IMPLEMENTATION ARTICLES, AND DRAFT FINAL CLAUSES [1]

PROPOSED DRAFT OF ARTICLE 1 (DEFINITIONS) OF THE CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES BY THE INFORMAL WORKING GROUP (*)

Article 1

DEFINITIONS

Except where otherwise expressly indicated, or where the context otherwise requires, the following terms in this Convention have the meanings given below:

(a) "Board" means the International Narcotics Control Board provided for in the Single Convention on Narcotic Drugs, 1961;

(b) "Commercial carrier" means any person or entity engaged in transporting, for remuneration or hire, persons or goods;

(c) "Commission" means the Commission on Narcotic Drugs of the Council;

(*) Definitions contained in the text of article 1 refer to the substantive provisions of the draft as they exist at the present state. Any future change in the content of the substantive articles or paragraphs may imply modification of the definitions.

The possibility of inserting new definitions, when necessary because of the inclusion in the substantive articles of new subject-matters, as, for instance, "non-commercial carriers", was recognized.

It was also recognized that normative elements which may be related to each definition shall be included in the corresponding substantive provisions (as e.g. whether recourse to controlled delivery technique must be based on mutual agreement of the states concerned).

The definition of the term "transit state" is indicated, but not formulated, because the substantive provisions where it would be used are so far not sufficiently defined and some delegations announced that they will propose a new draft.

[1] Source: U.N. Document DND/DCIT/WP. 1, 6 April 1987. "Working Document on the Draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" prepared by the Division of Narcotic Drugs.

(d) "Controlled delivery" means the investigative technique of allowing illicit consignments of controlled substances [or specific chemicals] to pass out, through or into the territory of one or more countries, with the knowledge and under surveillance of their competent authorities;

(e) "Controlled substances" means any of the substances in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and of that Convention as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, and any of the substances in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971;

(f) "Council" means the Economic and Social Council of the United Nations;

(g) "Freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property;

(h) "Illicit traffic" means the cultivation, production, manufacture, extraction, preparation, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch through the mails, dispatch in transit, transport, importation and exportation of any controlled substance contrary to the provisions of the Single Convention on Narcotic Drugs, 1961, of that Convention as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, and of the Convention on Psychotropic Substances, 1971. Illicit traffic also includes the possession of any controlled substance for the purpose of any of the foregoing activities. [It also includes traffic in specific chemicals contrary to article 8 of the present Convention.]

(i) "Concealment" means the concealment or disguise of the nature, source, disposition, movement or ownership of property and includes the movement or conversion of property by electronic transmission or by any other means;

(j) "List A" and "List B" mean the correspondingly designated lists of specific chemicals annexed to this Convention, as amended from time to time in accordance with article 8 of this Convention;

(k) "Property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing title to, or interest in, such property or assets;

(l) "Secretary-General" means the Secretary-General of the United Nations;

(m) "Seizure" means assuming custody or control of property by a competent authority;

(n) "Specific chemicals" means a substance in List A or List B of this Convention used in the illicit processing or manufacture of controlled substances;

(o) "Tracing" means determining the nature, source, disposition, movement or ownership of property.

(P) "Transit State" (.....).

DRAFT PREAMBLE

The Parties,

Deeply concerned by the magnitude of and upward trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances which pose a serious threat to the health and welfare of human beings, and adversely affect the economic, cultural and political foundations of society,

Observing the links between drug trafficking and other associated organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing that drug trafficking is an international criminal activity demanding urgent attention and maximum priority,

Aware that drug trafficking generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of Government, legitimate commercial and financial business, and society at all its levels,

Desiring to deprive drug traffickers of the proceeds of their criminal activity and thereby eliminate their main incentive for engaging in drug trafficking,

Considering that measures of supervision are necessary for substances, including precursors, chemicals and solvents, the ready availability of which has led to an increase in the clandestine production of narcotic drugs and psychotropic substances falling under the provisions of the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances,

Noting that the increased smuggling of drugs through regular post office channels calls for strengthening the existing international conventions which prohibit the illicit carriage of drugs in the mail,

Desiring to improve international co-operation in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea,

Recognizing that eradication of drug trafficking is the collective responsibility of all States,

Aware of the necessity of dealing with drug trafficking by effective co-ordinated action within the framework of international co-operation,

Acknowledging the competence of the United Nations in the field of drug control and desirous that the international organs concerned with drug control should be within the framework of that Organization,

Reaffirming the guiding principles of existing drug control treaties and the system of drug control which they embody,

Recognizing the need to reinforce and complement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude, extent and complexity of the illicit traffic in narcotic drugs and psychotropic substances and its grave consequences,

Desiring to conclude an effective and operative international convention against the illicit traffic in narcotic drugs and psychotropic substances which considers the various aspects of the problem as a whole, in particular those not envisaged in the existing drug control treaties,

Hereby agree as follows:

[...]

DRAFT IMPLEMENTATION ARTICLES

Article I

GENERAL OBLIGATIONS

The Parties shall take such legislative and administrative measures as may be necessary:

(a) To give effect to and carry out the provisions of this Convention within their own territories;

(b) To co-operate with other States in the execution of the provisions of this Convention.

Article II

FUNCTIONS OF THE COMMISSION

The Commission may consider all matters pertaining to the aims of this Convention, and in particular:

(a) Make recommendations for the implementation of the provisions of this Convention;

(b) Draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith;

(c) Establish and modify lists A and B in accordance with article 8; and

(d) Call the attention of the Board to any matters which may be relevant to the functions of the Board.

Article III

REPORTS TO BE FURNISHED BY THE PARTIES

1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions, and in particular an annual report regarding the working of the Convention in their territories, including information on:

(a) the text of all laws and regulations from time to time promulgated in order to give effect to this Convention, and

(b) significant developments in the illicit traffic within their territories.

2. The Parties shall furnish, as soon as possible after the event, a report to the Secretary-General in respect of any case of illicit traffic or seizure from such illicit traffic which they consider important because of the new trends disclosed, the quantities involved, the light thrown on the sources from which the controlled substances are obtained or the methods employed by illicit traffickers. Copies of the report shall be communicated in accordance with subparagraph (b) of article IV.

3. The Parties shall furnish the information referred to in paragraph 1 in such a manner and by such dates as the Commission may request.

Article IV

CO-CORDINATION AGENCY

Having due regard to their constitutional, legal and administrative systems, the Parties shall:

(a) Make arrangements at the national level for the co-ordination of preventive, investigative and repressive action against the illicit traffic, in particular for ensuring effective co-operation under article 6; to this end, they shall [variant: may usefully] designate an appropriate agency responsible for such co-ordination which may [variant: may with advantage] be the same as, or work in close co-operation with, the agency which may have been designated in accordance with article 35, paragraph (a), of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961 or article 21, paragraph (a), of the 1971 Convention on Psychotropic Substances.

(b) Assist each other in the campaign against the illicit traffic, and in particular immediately transmit, through the diplomatic channel or the competent authorities designated by the Parties for this purpose, to the other Parties directly concerned, a copy of any report addressed to the Secretary-General under article III in connection with the discovery of a case of illicit traffic or a seizure;

(c) Co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;

(d) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

(e) Ensure that, where legal papers are transmitted internationally for the purpose of judicial proceedings, the transmittal be effected in an expeditious manner to the appropriate authorities designated by the Parties in accordance with article 5, paragraph 5.

Article V

MEASURES BY THE [BOARD] [COMMISSION] [COMMITTEE*] TO ENSURE THE EXECUTION OF THE PROVISIONS OF THE CONVENTION

1.(a) If, on the basis of its examination of information submitted by governments to the Secretary-General or to the Board or of information communicated by United Nations organs, the [Board] [Commission] [Committee*] has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of a State to carry out the provisions of this Convention, the [Board] [Commission] [Committee *] shall have the right to ask for explanations from the Government of the State in question.

(b) After taking action under subparagraph (a), the [Board] [Commission] [Committee *], if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

(c) If the [Board] [Commission] [Committee *] finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a), or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b), it may call the attention of the Parties, [and] the Council [and the Commission] to the matter.

2. The [Board] [Commission] [Committee *] shall publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. It shall also publish therein the views of the Government concerned if the latter so requests.

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* The Commission may wish to consider the advisability of setting up a special committee to monitor, under its aegis, implementation of the convention; in that case, such a committee could be created by inclusion of an article such as the following:

COMMITTEE ON ILLICIT TRAFFIC

1. The Commission shall establish a Committee on Illicit Traffic (hereinafter referred to as the Committee) to monitor implementation of the present treaty and report thereon to the Commission.

2. The Committee shall be composed of fifteen members elected by secret ballot by the Commission at its [regular] sessions from among a list of persons nominated by the members of the Commission.

3. The members of the Committee shall be selected from among the participants in delegations of States members of the Commission and with due regard to appropriate geographical and regional representation. They shall be elected and shall serve in their personal capacity. However, the Committee may not include more than one national of the same State.

3. If in any case a decision of the [Board] [Commission] [Committee *] which is published under this article is not unanimous, the views of the minority shall be stated.

4. Any State shall be invited to be represented at a meeting of the [Board] [Commission] [Committee *] at which a question direclty interesting it is considered under this article.

5. Decisions of the [Board] [Commission] [Committee *] under this article shall be taken by a two-thirds majority of the whole number of the [Board] [Commission] [Committee *].

Article VI

APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of the illicit traffic.

DRAFT FINAL CLAUSES

Article I

SIGNATURE, RATIFICATION AND ACCESSION

(variant A)

1. Members of the United Nations, States not Members of the United Nations which are members of a specialized agency of the United Nations or of the International Atomic Energy or Parties to the Statute of the International Court of Justice, and any other State invited by the Council, may become Parties to this Convention:

(a) By signing it; or
(b) By ratifying it after signing it subject to ratification; or
(c) By acceding to it.

2. The Convention shall be open for signature until ..... inclusive. Thereafter it shall be open for accession.

3. Instruments of ratification or accession shall be deposited with the Secretary General.

(variant B)

1. The present Convention is open for signature by all States.

2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General.

3. The present Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General.

Article II

ENTRY INTO FORCE

(variant A)

1. The Convention shall come into force on the thirtieth/sixtieth/ninetieth day after twenty/thirty/forty of the States referred to in paragraph 1 of article I have signed it without reservation of ratification or have deposited their instruments of ratification or accession.

2. For any other State signing without reservation of ratification, or depositing an instrument of ratification or accession after the last signature or deposit referred to in the preceding paragraph, the Convention shall enter into force on the thirtieth/sixtieth/ninetieth day following the date of its signature or deposit of its instrument of ratification or accession.

(variant B)

1. This Convention shall enter into force on the thirtieth/sixtieth/ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth/thirtieth/fortieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth/thirtieth/fortieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth/sixtieth/ninetieth day after the date of the deposit of its own instrument of ratification or accession.

Article III

TERRITORIAL APPLICATION

(variant A)

The Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when the consent is obtained the Party shall notify the Secretary-General. The Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

(variant B)

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General and shall take effect as from the thirtieth/sixtieth/ninetieth day after the day of receipt by the Secretary-General of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article IV

DENUNCIATION

(variant A)

1. After the expiry of two years from the date of the coming into force of this Convention any Party may, on its own behalf or on behalf of a territory for which it has international responsibility, and which has withdrawn its consent given in accordance with article III, denounce this Convention by an instrument in writing deposited with the Secretary-General.

2. The denunciation, if received by the Secretary-General on or before the first day of July of any year, shall take effect on the first day of January of the succeeding year, and if received after the first day of July it shall take effect as if it had been received on or before the first day of July in the succeeding year.

3. The Convention shall be terminated if, as a result of denunciations made in accordance with paragraphs 1 and 2, the conditions for its coming into force as laid down in paragraph 1 of article II cease to exist.

(variant B)

1. A State Party may denounce this Convention at any time by written notification addressed to the Secretary-General.

2. Such denunciation shall take effect for the State Party concerned one year after the date of receipt of the notification by the Secretary-General.

3. A State which has made a notification under article III may, at any time thereafter, by a notification to the Secretary-General, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article V

AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated to the Secretary-General, who shall communicate them to the Parties and to the Council. The Council may decide either:

(a) That a conference shall be called in accordance with paragraph 4 of Article 62 of the Charter of the United Nations to consider the proposed amendment; or

(b) That the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

2. If a proposed amendment circulated under paragraph 1(b) has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

Article VI

RESERVATIONS

1. A State may at the time of signature, ratification or accession make reservations in respect of the following provisions of the present Convention:

(a) Article .....
(b) Article .....

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted. A reservation shall be considered incompatible if at least two-thirds of the Parties to this Convention object to it.

3. A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraph 1 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have signed without reservation of ratification, ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation.

4. A State which has made reservations may at any time by notification in writing to the Secretary-General withdraw all or part of its reservations.

(variants of paragraphs 1 and 4)

1. At the time of signature, ratification or accession any State may make reservations to any article of the Convention other than articles ...

4. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw all or part of its reservation by a notification to that effect addressed to the Secretary-General.

Article VII

DISPUTES

(variant A)

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed shall be referred, at the request of any one of the Parties to the dispute, to the International Court of Justice for decision.

(variant B)

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other State Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article VIII

NOTIFICATIONS

The Secretary-General shall notify to all the States referred to in paragraph 1 of article I:

(a) Signatures, ratifications and accessions in accordance with article I;

(b) The date upon which this Convention enters into force in accordance with article II;

(c) Denunciations in accordance with article IV; and

(d) Declarations and notifications under articles III, IV and VII.

A P P E N D I X IV

INTERIM PARTIAL REDRAFT OF ARTICLES 2, and 6 THROUGH 14. (JULY 22, 1987.)[1]

REFORMULATION OF ARTICLES CONSIDERED BY THE EXPERT GROUP

Article 2

[OFFENCES, SANCTIONS AND JURISDICTION]

1. [.....]

(a) Illicit traffic;

(b) Manufacture, distribution or [intentional] [possession] of materials or equipment [with the knowledge that they are to be] used in illicit production or manufacture of controlled substances [with the knowledge that they were to be used for such purposes];

(c) [Acquisition, possession, transfer, utilization or] concealment of property with the knowledge that such property was obtained [or derived directly or indirectly from] [or used in] the illicit traffic, irrespective of where such traffic occurred;

(d).....

2. Each Party shall make the offences set forth in paragraph 1 of this article punishable by penalties which take into account the grave nature of these offences, [particularly by] [such as] imprisonment [or other forms of deprivation of liberty] [and forfeiture of goods or property].

[Each Party shall also make the offences set forth in paragraph 1 of this article subject to pecuniary sanctions] [and forfeiture].

[Any controlled substances, equipment, goods or property used in the commission of the offences set forth in paragraph 1 of this article shall be subject to seizure and forfeiture].

[.....]

[1] Source: U.N. Document DND/DCIT/WP.12, 22 July 1987. "Interim Report of the Open-Ended Intergovernmental Expert Group Meeting on the Preparation of a Draft Convention Against Illicit Traffic in Norcotic Drugs and Psychotropic Substances."

Article 6

OTHER FORMS OF CO-OPERATION AND TRAINING

1. The Parties shall co-operate closely with each other, consistent with their respective national legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the illicit traffic. They shall, in particular:

(a) Establish and maintain channels of communication between competent national agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of illicit traffic, including, if the Parties concerned deem it appropriate, links with other criminal activities.

(b) Co-operate with one another in conducting enquiries with respect to the illicit traffic at the international level, the identification, whereabouts and activities of traffickers, and the movement of property that may be derived from or used in the illicit traffic.

(c) In appropriate cases and if not contrary to national law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party on whose territory the operation is to take place. In all such cases the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected.

(d) Transfer, when appropriate, samples of controlled substances for analytical or investigative purposes.

2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement, customs and other personnel charged with the suppression of the illicit traffic. Such programmes shall deal, in particular, with the following:

(a) Methods used in the detection and suppression of the illicit traffic;

(b) Routes and techniques used by traffickers, particularly in transit States, and appropriate countermeasures;

(c) Monitoring of the import and export of controlled substances;

(d) Detection and monitoring of the flow of [property] derived from or used in the illicit traffic;

(e) Methods used [for concealment of] such [property];

(f) Collection of evidence;

(g) Control techniques in free trade zones and free ports;

(h) Modern law enforcement techniques.

3. The Parties shall assist each other to plan and implement training programmes designed to share expertise in the areas referred to in paragraph 2 and, to this end, shall also, when appropriate, use regional and international conferences and seminars to stimulate co-operation and allow discussion on problems of mutual concern, including the special problems and needs of transit States.

4. The Parties shall facilitate effective co-ordination between their competent national agencies and services and, in that context, shall consider, where appropriate, allowing the posting of liaison officers from other Parties within their borders, on the basis of bilateral or other agreements or arrangements, and promoting the exchange of personnel and other experts on the illicit traffic.

5. The Parties shall endeavour, directly or through competent international organizations, to establish programmes of technical co-operation for the benefit of Parties, with due regard to the special problems and needs of those which are transit States, to improve channels of communication and to provide technical aid when requested and able to do so.

Article 7

CONTROLLED DELIVERY

1. Consistent with the basic principles of their respective national legal systems, the Parties shall take the necessary measures to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in illicit traffic and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

Article 8

MEASURES TO MONITOR OR CONTROL IMMEDIATE PRECURSORS AND ESSENTIAL CHEMICALS USED IN THE ILLICIT PROCESSING OR MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. Each Party shall take the measures it deems appropriate to prevent diversion of immediate precursors in List A and essential chemicals in List B, used for the purpose of illicit manufacture of controlled substances, and shall co-operate with each other to this end.

2. If a Party or the Board has information which in its opinion may require the inclusion of an immediate precursor in List A or an essential chemical in List B, it shall notify the Secretary-General and furnish him with the information in support of that notification.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties and the Board shall communicate their comments concerning the notification to the Secretary-General, and all supplementary information which may assist the Commission in taking a decision.

4. The Commission, taking into account the comments submitted by Parties and the comments and recommendation of the Board, and also taking into due consideration any legitimate use and other factors that may be relevant, may decide by a vote of two-thirds majority of its members to place an immediate precursor in List A or an essential chemical in List B if it finds that there is sufficient evidence of its use in the illicit manufacture of a controlled substance producing public health or social problems, so as to warrant international action.

5. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party 180 days after the date of such communication.

6. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within 180 days after the date of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based.

(b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit comments within 90 days. All comments received shall be submitted to the Council for consideration.

(c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission and to the Board.

7. The procedure described in paragraphs 2-6 of this article shall also apply when a Party or the Board has information justifying the deletion of an immediate precursor from List A or an essential chemical from List B.

8. Each Party shall, with respect to substances in List A and List B, take the following measures:

(a) Establish and maintain a system to monitor international trade in immediate precursors and essential chemicals in order to facilitate the identification of suspicious transactions. Such monitoring systems [may] [should] be conducted in close co-operation with manufacturers, importers, exporters, wholesalers and retailers;

(b) Encourage manufacturers, importers, exporters, wholesalers and retailers to inform the competent national authorities of suspicious orders and transactions;

(c) Provide for the seizure of any immediate precursor or essential chemical if there is sufficient evidence that it is [intended] for use in the illicit manufacture of a controlled substance;

(d) Notify the appropriate authorities of the Parties concerned if there is reason to suspect that the import, export or transit of an immediate precursor or essential chemical is destined for illicit manufacture of a controlled substance;

(e) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, bills of lading, customs documents and other shipping documents shall include the names as stated in List A or List B of the immediate precursor or essential chemical being imported or exported, the quantity being imported or exported, the name and address of the importer, the exporter and the consignee.

(f) Provide for legal, administrative or other mechanisms whereby documents referred to in paragraph (e) are maintained for a period not less than two years and may be made available for inspection by the competent national authorities

9. (a) In addition to the provisions of paragraph 8, each Party shall require that for each export [or import] of immediate precursors in List A, exporters [or importers] shall draw up in advance a declaration in triplicate, on a form to be established by the Commission, containing the following information:

(i) The name and address of the exporter and importer;

(ii) The designation of the immediate precursor contained in List A;

(iii) The quantity of the immediate precursor exported;

(iv) The date of despatch and arrival.

(b) Exporters [and importers] shall furnish two copies of the declaration to the competent national authorities before export. Exporters shall attach the third copy to their consignment.

(c) A Party from whose territory an immediate precursor in List A has been exported, shall as soon as possible, send to the competent authorities of the importing country by registered mail with return receipt requested, one copy of the declaration received from the exporter.

(d) Each Party shall require that, on receipt of the consignment, the importer shall transmit the copy accompanying the consignment, duly endorsed, stating the quantities received and the date of receipt, to the competent national authorities of the importing country.

10. Each Party shall furnish [annually] to the Board, in the form and manner provided for by it and on forms made available by it, information on:

(a) The amounts seized of immediate precursors in List A and essential chemicals in List B, and, when known, their origin;

(b) Any chemicals, solvents or precursors not included in List A or List B which are identified as having been used in illicit manufacture of controlled substances;

(c) Methods of diversion and illicit manufacture.

11. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Lists A and B.

12. The provisions of this article shall not apply to preparations intended for therapeutic use containing the immediate precursors in List A or essential chemicals in List B.

Tentative lists

(further definition of substances concerning salts, etc. to be made)

List A	List B
Ergotamine	Acetic Anhydride
Ergometrine	Acetone
Phenyl-2-propanone	Ethyl Ether
Ephedrine	Anthranilic Acid
Psuedo Ephedrine	Phenylacetic Acid
Lysergic Acid	Piperidine

Proposed definitions

The term "immediate precursor" means a substance used as [immediate] starting material in the final step of illicit manufacture of controlled substances and is therefore critical to its manufacture.

The term "essential chemical" means a substance used as an intermediate, reagent, reactant or solvent in the illicit manufacture of a controlled substance and is not an immediate precursor.

Article 9

MATERIALS AND EQUIPMENT

The Parties shall co-operate to suppress trade in materials and equipment for illicit manufacture of narcotic drugs and psychotropic substances.

Article 10

MEASURES TO ERADICATE NARCOTIC PLANTS CULTIVATED ILLICITLY AND TO ELIMINATE ILLICIT DEMAND FOR DRUGS

1. Each Party shall take appropriate measures to prevent the illicit cultivation of and to eradicate plants containing psychotropic or narcotic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. Such measures shall not be less stringent than the requirements applicable to the cultivation of narcotic plants under the provisions of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961. The measures adopted shall respect fundamental human rights and shall take due account of traditional domestic uses of such plants as well as the protection of the environment.

2. The Parties may co-operate to increase the effectiveness of eradication efforts. Such co-operation may, inter alia, include support, when appropriate, for integrated rural development leading to economically viable alternatives to cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. Parties may agree on any other appropriate measures of co-operation. They shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication. Parties with common frontiers shall seek to co-operate in eradication programmes in areas along those frontiers.

3. The Parties shall adopt appropriate measures aimed at eliminating illicit demand for drugs, with a view to eliminating the financial incentives for illicit traffic.

Article 11

COMMERCIAL CARRIERS

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the illicit traffic; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for illicit traffic. Such precautions may include:

(a) If the commercial carrier has its principal place of business within the territory of the Party:

(i) Training of personnel to identify suspicious shipments or persons;

(ii) Promotion of employee integrity.

(b) If the carrier is operating within the territory of the Party:

(i) Provision of cargo manifests in advance, when possible;

(ii) Use of tamper-resistant individually verifiable seals on containers;

(iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious incidents that may be related to illicit trafficking.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas co-operate, with a view to preventing unauthorized access to means of transport and cargo, and implementing appropriate security measures.

Article 11 bis

LABELLING AND COMMERCIAL DOCUMENTS

1 Each Party shall require that consignments of controlled substances, immediate precursors in List A or essential chemicals in List B be properly labelled and documented.

2. In this connection, the Parties shall ensure that commercial documents such as invoices, cargo manifests, bills of lading, customs and other shipping documents include the denominations of the controlled substances, immediate precursors in List A or essential chemicals in List B to which they refer. Such documents should also indicate the quantities despatched of the controlled substances, immediate precursors or essential chemicals, and the name and address of the importer, the exporter and the consignee.

Article 12

ILLICIT TRAFFIC BY SEA

1. The Parties shall co-operate to the fullest extent possible to suppress the illicit traffic by sea.

2. If a Party, which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or markings of registry is being used for the illicit traffic, requests the assistance of other Parties in suppressing its use for that purpose, the Parties so requested shall render such assistance, within the means available to them.

3. Without prejudice to any rights provided for under general international law, a Party, which has reasonable grounds for believing that a vessel that is beyond the external limits of the territorial sea of any State and is flying the flag of another Party is engaged in illicit traffic, may, if that Party has received prior permission from the flag State, board, search and, if evidence of illicit traffic is discovered, seize such a vessel.

4. For the purposes of paragraph 3 of this article, a Party shall respond in an expeditious manner to requests from another Party to determine whether a vessel is registered under its laws and to requests for permission made pursuant to the provisions in that paragraph. At the time of adhering to the Convention, each Party shall designate an authority to receive and respond to such requests. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties within one month of the designation.

5. Where evidence of illicit traffic is found, the Party having custody of the vessel shall take appropriate action with respect to the vessel and persons on board, in accordance with treaties, where applicable, or any prior agreement or arrangement otherwise reached with the flag State.

6. A Party which has taken any action contemplated in this article shall promptly inform the flag State concerned of the results of that action.

7. The Parties shall consider entering into bilateral and regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

Article 13

FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress the illicit traffic in controlled substances in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

(a) To monitor the movement and transshipment of goods in free trade zones and free ports, and, to that end, shall empower appropriate authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles;

(b) To establish a detection system to discover and identify suspicious substances passing in or out of those areas, including, when appropriate, the search of crew membrs and passengers and their baggage;

(c) To maintain patrols in harbour and dock areas and at airports and border control points in those areas.

Article 14

SUPPRESSION OF THE USE OF THE MAILS FOR ILLICIT TRAFFIC

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and consistent with the basic principles of their respective national legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall co-operate with one another to that end.

2. Measures referred to in paragraph 1 of this article shall include, in particular:

(a) Co-ordinated preventive and repressive action to discourage the use of the mails for illicit traffic;

(b) Introduction and maintenance by authorized law enforcement personnel of investigative techniques designed to detect controlled substances in the mails;

(c) Legislative measures designed to enable the use of appropriate means to secure evidence required for judicial proceedings.

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